Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/23246/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 May 2017	**On 05 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

G O
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Sesay, solicitor
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria who appealed to the First-tier Tribunal against the decision of the respondent on 5 June 2015 refusing her application for leave to remain in the UK on human rights grounds. Her appeal was dismissed by First-tier Tribunal Judge Andonian ("the FTTJ") both under the Immigration Rules and pursuant to the Article 8 jurisprudence.

2. Given my references to the appellant's mother's health issues, the appellant is entitled to an anonymity direction and I make one accordingly.

3. Permission to appeal was granted by First-tier Tribunal Judge M Robertson on 24 April 2017 in the following terms:

> "… Although there is little arguable merit in ground 2 at paras 7, it is arguable, as submitted at para 8 of the grounds (ground 3) that the Judge did not engage with all the evidence presented and simply relied on the Appellant's lack of knowledge of the hours worked by her mother to establish that there was no dependency between them. This arguably resulted in adequate [sic] reasons for his findings on dependency and arguably would affect his proportionality assessment under Article 8 and hence has some bearing on whether ground one at para 5 and ground 4 are arguable. Permission to appeal is therefore granted."

4. Thus the appeal has come before me.

Submissions

5. With the agreement of the parties, I proceeded on the basis that permission to appeal had been granted on all the grounds sought.

6. Mr Sesay, for the appellant, relied on his skeleton argument and the grounds of appeal which I summarise. It was submitted the FFTJ had made a material misdirection of law, failed to give reasons or adequate reasons for his findings on material matters, failed to engage with the evidence and that there had been unfairness amounting to a procedural irregularity. It was submitted that by narrowing the existence of family life between the appellant and her mother solely on the basis of knowledge or lack of knowledge of her mother's whereabouts (paragraphs 10 and 12) was wrong. The FTTJ had failed to engage with the evidence before him which established the relationship between the appellant and her mother and to make a finding of fact accordingly. There was, it was submitted, a misdirection of law on the approach to the proportionality assessment and/or insufficient reasoning "for not engaging with Article 8" at paragraph 11. Furthermore, there were factual errors in the decision which led the appellant to conclude that the FTTJ had not given her case appropriate scrutiny.

7. For the respondent, Mr Nath submitted that the absence of dependency between the appellant and her mother had been reasoned appropriately. The evidence suggested a lack of dependency and the FTTJ was entitled to make such a finding on the evidence. Although the decision was brief the reasoning was adequate. The FTTJ had identified the law and applied it correctly on the evidence before him. He had engaged with the evidence. As regards alleged unfairness, the FTTJ had made an appropriate assessment with regard to the father, querying attempts made to contact him (at [8]). This was appropriate given the presenting officer's submissions to the FTTJ ([8] and [9] refer). There was no protection claim; the FTTJ did not need to address the claimed threat of FGM save in the context of whether there were significant obstacles to reintegration on return.

Discussion

8. The decision and reasons of the FTTJ is brief and somewhat muddled. There are various discrepancies in the decision. For example, the heading states that there was no presenting officer for the respondent whereas I am told the respondent was represented at the hearing. The FTTJ states at paragraph 3 that the appellant entered the UK on 18 April 2006 whereas at paragraph 4 he refers to the appellant having lived in the UK "for some 8 years". In fact she had lived in the UK for over ten years at the date of hearing.

9. The paragraph of the Rules to which the FTTJ refers at [6] is not intelligible. It refers to "paragraph 276 A, D and E (1) 91 and 2 and 6B1". These paragraphs do not exist. However, there is reference to the appellant's contention that there "would be very significant obstacles to her integration if she were to return to Nigeria" and I infer therefore that the FTTJ intended to cite paragraph 276ADE(1)(vi) of the Rules. I agree with Mr Sesay that these errors, at the least, suggest the decision had not been given the attention it deserved.

10. The appellant's principal issue in the appeal before me is the manner in which the FTTJ addressed the appellant's claim to have a family life with her mother. There is no suggestion that the appellant was capable of demonstrating she fulfilled the criteria in Appendix FM in this respect. However, the issue is relevant not only to an assessment outside the Rules on Article 8 grounds but also pursuant to paragraph 276ADE(1)(vi) in respect of the appellant's private life. The nub of the appellant's complaint is that the FTTJ had failed to find, on the evidence before him, that the appellant and her mother had a relationship with was closer than the norm for an adult child and her mother (**Kugathas v SSHD [2003] EWCA Civ 31**). Mr Sesay submitted that the finding of a lack of dependency between mother and daughter, based wholly as it was on the appellant's inconsistent evidence as to her mother's working hours, was inadequately reasoned. The appellant said that her mother went to work early in the morning at about 5 am and returned home late at about 10 or 11 pm. The FTTJ noted the appellant did not say her mother returned to the family home during the day between those hours. The FTTJ found that "this suggested to [him] that there is no dependency of the appellant on her mother". I agree with Mr Sesay that this discrepancy in the evidence, without more, is insufficient to justify a finding of no dependency between mother and daughter. The FTTJ has failed to take into account, in making his finding, the undisputed fact that the appellant and her mother lived together, had done so since her birth, and the appellant's mother supported her financially. Indeed there is no evidence of other financial provision. The FTTJ failed to take these non-contentious matters into account in his assessment of the nature and quality of the appellant's relationship with her mother. This is an error of law which taints the remainder of the FTTJ's findings with regard to the appellant's family and private life and whether she met the criteria in paragraph 276ADE(1)(vi) and under the Article 8 jurisprudence. It is a material error because the outcome might have been different.

11. The parties were in agreement that if I found one or more material errors of law, I should remake the decision on the basis of the evidence before me. Neither representative made further submissions on the issue save to confirm that the evidence of the appellant was accurately cited in the decision of the FTTJ and, to that extent only, it could be relied upon in the remaking of the decision.

12. The appellant entered the UK on a visit visa in April 2006 and has lived here ever since. She has now lived in the UK for a period of eleven years. She lives with her mother and brother who have limited leave to remain in the UK. She is supported financially by her mother. The appellant is engaged in voluntary work for her church. She has been educated in this country, having lived here since the age of 12. There is no suggestion that she qualifies for leave to remain under Appendix FM.

13. I deal first with paragraph 276ADE(1)(vi). The appellant has not demonstrated that she is at risk of FGM by her family in Nigeria. Were that to be the case, she would have made a protection claim, particularly as she is represented by solicitors and has, according to her witness statement, made three applications to live in the UK, all of which have been refused. Given that background, if the appellant were genuinely at risk of FGM on return, it is inconceivable that she would not have made a protection claim by now. Furthermore, in her

witness statement, the appellant says "as I grew older, I have tried without success to trace my father so that he would help me and get to know him as my father". This is wholly inconsistent with the claim in paragraph 3 of the same statement that "my grandmother informed my mother that my father and his family were still looking for me and committed to have me subjected to FGM". I give no credence to the suggestion that she is at risk of FGM on return. I am satisfied that this is evidence which has been fabricated to demonstrate obstacles to her return.

14. The appellant has always lived with her mother and brother in the same household. She is financially dependent on her mother. Her mother works long hours as a cleaner and supports the family. Her mother has some health issues. The medical evidence is that these include Type 1 Diabetes Mellitus for which she is on insulin. She attends hospital for regular review of her diabetes; she has to monitor her blood glucose levels up to four times a day, sometimes more if she is unwell or experiences a hypoglycaemic episode. The appellant's mother also has a long-standing history of osteoarthritis of the left knee; she takes medication for her symptoms. She also has lower back pain. The appellant's mother has another specific chronic condition but in a specialist report dated 3 December 2015 she was described as "generally well" and there is no suggestion that this chronic condition impacts significantly on her well-being, albeit she takes regular medication for it. Of particular relevance is the fact that, despite this range of medical conditions, the appellant's mother is able to work relatively long hours doing physical work as a cleaner, working shifts in the mornings and evenings. There is no suggestion in the medical evidence that the appellant's mother requires any type of care and support as a result of her medical conditions, either from her daughter or anyone else.

15. The appellant left Nigeria at the age of 12. She has spent more than half her life in her country of origin, where she was born and brought up. She has maintained her familiarity with Nigerian life and culture, living as she does within the Nigerian diaspora in the UK. I accept she has lost contact with her father. I do not accept she cannot regain contact with him and his family or that he or his family would subject her to FGM. I find that he is a potential source of support for her on return. The appellant has relatives in Nigeria. She can make contact with them. She could also regain contact with former friends in Nigeria. Such people would provide her with practical support, at least in the short term. Her mother provides her with financial support at the moment and could send funds to the appellant in Nigeria on return. She is an adult of 23 and has acquired an education in this country. She is capable of employment, albeit perhaps menial.

16. For all these reasons, I am unable to find that the appellant has demonstrated that there are very significant obstacles to her returning to Nigeria. She does not fulfil the criteria in paragraph 276ADE(1)(vi).

17. I turn to the issue of the appellant's and her mother's family life. It was submitted in the First-tier Tribunal that Article 8 was engaged in this respect because of the appellant's dependence on her mother and the latter's dependence on her.

18. I accept that Article 8 is engaged in this respect: the appellant lives with her mother and is financially dependent on her. However, whilst I accept they have an emotional bond, I am unable to accept it is greater than the norm for an adult child and her mother. I am satisfied that the appellant and her mother have exaggerated the nature of their relationship. Their evidence on the extent of the help and assistance provided by the appellant to her mother, due to her poor health, is not consistent with the medical evidence and I find therefore that their evidence has been exaggerated. This exaggeration is likely to apply also to the appellant's and her mother's evidence of their relationship: the appellant's inability to recite her mother's

working hours is consistent with a normal emotional relationship between an adult child and mother, albeit there is cohabitation and financial dependence in this case. Nonetheless, the threshold for engagement of Article 8 is a low one and I am satisfied the appellant has demonstrated she has crossed that threshold due to her living with and depending financially on her mother. The decision to refuse leave to remain is a lawful one and I therefore turn to the issue of proportionality.

19. In so doing I bear in mind my findings fact above with regard to the application of paragraph 276ADE(21)(vi) because, to some extent, they relate to her family life with her mother.

20. I also take into account the public interest and the factors identified in s117A-117D of the Nationality, Immigration and Asylum Act 2002. The maintenance of effective immigration controls is in the public interest (s117B(1)). The appellant speaks English and is capable of working in the UK to become less of a burden on the taxpayer. She is integrated into society here, having been educated here since the age of 12. Little weight should be given to her private life because it has been established while in the UK unlawfully (s117B(4)). The appellant came to the UK at the age of 12 as a visitor. She has been an overstayer since her visit visa expired in April 2006.

21. There is no evidence that the appellant's support for her mother is required on medical grounds. I accept they have a close bond which has developed as a result of their moving together to this country but it is no more than the norm for an adult child and her mother, despite their living together and the appellant's financial dependence on her mother. The appellant and her mother have exaggerated the nature of their relationship to enable the appellant to remain in the UK: the medical evidence and the ability of the appellant's mother to hold down a relatively physical job as a cleaner, working two shifts a day, is not consistent with the evidence of the appellant and her mother as to the nature of the support provided by the appellant.

22. The decision will result, in due course, in the appellant's removal from the UK, causing the separation of the family members: the appellant's mother and brother will remain in the UK for the duration of their limited leave and the appellant will return to Nigeria. However, the appellant will continue to have the financial support of her mother in Nigeria; she can regain contact with her family there. The appellant is a capable adult who is able to find accommodation and employment in Nigeria with funds provided by her mother in the UK. She has produced a letter of support to the effect that she is "a very responsible young adult, she has been able to demonstrate this by serving in a very delicate department of the church (Finance department), she deals with counting and recording of the weekly offerings, which shows that she is a trust worthy and responsible person to be kept in such a position". The letter goes on to refer to her being denied a university education, but she could go to university in Nigeria, with her mother's financial support.

23. For these reasons, I find the degree of interference, both to the appellant's and her mother's right to a family life, resulting from the respondent's decision is proportionate to the public interest.

Decision

24. The making of the decision of the First-tier Tribunal involved the making of a material error on a point of law.

25. I set aside the decision of the First-tier Tribunal and remake it, dismissing the appellant's appeal against the respondent's decision of 5 June 2015.

Signed ***A M Black*** Date 2 June 2017
Deputy Upper Tribunal Judge A M Black

Direction Regarding Anonymity – Rule 14, Tribunal Procedure (Upper Tribunal) Rules 2008
Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Fee Award
The appeal has been dismissed and a fee award is therefore not appropriate.

Signed ***A M Black*** Date 2 June 2017
Deputy Upper Tribunal Judge A M Black