



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/16382/2015

THE IMMIGRATION ACTS

At: Field House
On: 3rd July 2018

Decision & Reasons Promulgated
On: 30th August 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Rebecca Eyamekuare
(no anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Mr V. Ogunbusola, Counsel instructed by Chancery CS
Solicitors
For the Respondent: Mr D. Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Nigeria born on the 20th August 1959. She appeals with permission a decision of the First-tier Tribunal (Judge NM Paul) dated 21st December 2017 to dismiss her human rights appeal.
2. The appeal comes before me by a somewhat unconventional route. The Respondent took his decision to refuse the Appellant leave back on the 9th April 2015. The Appellant appealed that decision to the First-tier Tribunal, where it was dismissed by

Judge Telford, by his decision of the 15th June 2016. The Appellant sought permission to appeal which resulted in the matter being remitted to the First-tier Tribunal by order of Deputy Upper Tribunal Judge Bagral on the 4th October 2017. Thus when Judge Paul dismissed the appeal on the 21st December 2017 it was the Appellant's second outing before the First-tier Tribunal. Those representing her lodged grounds of appeal on the 11th January 2018 and permission was granted on the 8th May 2018 by First-tier Tribunal Judge Parkes. What neither I, nor Mr Ogunbusola, nor Mr Clarke, have seen is the grounds upon which permission was apparently sought and granted. The only grounds in the file, and the only grounds available to the parties, were those drafted by a J. Khalid of Counsel on the 11th October 2016 in respect of the decision of Judge Telford. Two possibilities arise. The first is that there *were* grounds specific to the decision of Judge Paul but for reasons unknown they have been lost to all parties concerned. The second possibility is that Judge Parkes, in granting permission, overlooked the fact that the solicitors had simply submitted the old grounds relating to the old decision and finding the errors identified therein arguable, granted permission. Before me Mr Clarke was good enough to take no issue with this procedural peculiarity and ably defended the decision of Judge Paul against whatever the grounds might be.

3. Mr Ogunbusola for his part adopted Judge Parkes' grant of permission, and very helpfully agreed that the only ground that could reasonably be pursued was this: did the First-tier Tribunal err in its treatment of the 'best interests' of the Appellant's minor granddaughter, and if so, did this error fatally infect the overall proportionality balancing exercise?

The Factual Matrix

4. The agreed chronology is as follows:

1973	The Appellant, then aged 14, marries her husband Daniel Philip Eyamekuare in accordance with Nigerian customary law. They live together in Nigeria.
1974	The Appellant's son Ezekiel is born
c1977	The Appellant's son Ese is born
c1980	The Appellant's son Austin is born
c 1982	The Appellant's daughter Efe is born
c. 1986	The Appellant's son Aghogho is born
1990	The Appellant's daughter Onome is born
1990	The Appellant's husband comes to the United Kingdom as a visitor
March 2005	The Appellant, then aged 46, enters the United Kingdom in possession of a valid visit visa, in order to attend the wedding of her son Ezekiel. Onome comes with her.

October 2005	The Appellant and Onome become overstayers.
2010	The Appellant's husband is naturalised as a British national.
7 th September 2011	The Appellant's granddaughter M is born in the UK.
January 2012	The Appellant brings herself to the attention of the immigration authorities by making an application for leave to remain on human rights grounds. That application, and a second made on the 22 nd March 2012, is refused.
September 2014	The Appellant applies (for a third time) for leave to remain on human rights grounds.
9 th April 2015	The application is refused.

5. The Appellant is unwell and has, since her arrival in 2005, been accessing extensive NHS care to which she is not entitled. This includes treatment for hypertension, depression, knee pain/osteoarthritis. In a report dated 12th April 2016 Consultant Psychologist Dr Tony Ogefere opined that the Appellant is suffering from Major Depressive Disorder exacerbated by traumatic life events such as her son going missing in Nigeria. Prior to preparing his report Dr Ogefere saw the Appellant on thirteen occasions between April 2015 and March 2016. The Appellant's husband also has various ailments including high blood pressure.
6. Before the First-tier Tribunal the Appellant relied on a report prepared by Social Worker Mojisola Okanlami. Ms Okanlami visited the Appellant at the family home that she shares with her husband on one occasion. She met with the Appellant's daughter-in-law (M's mother) who described the Appellant as a "pillar" of support and explained that the Appellant has a particularly strong bond with M who looked after her when her parents were at work. This bond has persisted despite M now being in full-time education and her grandmother still minds her after nursery on some days.

The First-tier Tribunal Decision

7. The Tribunal began by addressing the Article 8 claim within the framework of the rules by directing itself thus: "the common test here, in relation to the Partner route and private life, is that there are insurmountable obstacles to returning to Nigeria". In assessing whether such 'insurmountable' obstacles exist the Tribunal notes that the Appellant's husband apparently chose to leave his wife and children behind in Nigeria when he came to live in the United Kingdom. The Tribunal found the evidence in relation to what family might remain in Nigeria "not entirely convincing". The Tribunal found it unlikely that the Appellant would have been left to raise six children on her own with no support from wider family. The Tribunal was not satisfied that the Appellant's husband had lost all ties to Nigeria. He left that country as a mature man

and would retain social and cultural links there. The conclusion is reached that the Appellant cannot meet the requirements of the rules.

8. Turning to Article 8 outside of the rules the determination begins by finding that when the Appellant and her fifteen-year old daughter arrived in this country as visitors in 2005 they did so with the express intention of remaining here. This decision was partly influenced by the fact that the Appellant was in poor health and intended to access free NHS care. In respect of s117B of the Nationality, Immigration and Asylum Act 2002 the determination records that the Appellant has not had any leave to be in this country since 2005. She is, and will be, a significant burden to the taxpayer given the medical assistance that she requires. That said, the payslips and other documentation produced does indicate that the Appellant's husband earns over the minimum income requirement. The Tribunal notes that there does not appear to have been any consideration given to her simply returning to Nigeria and making an application through the normal channels. The determination then says this [at §36]:

“So far as the general health conditions raised by the medical evidence are concerned, I do not see that these, by themselves, give rise to exceptional circumstances. The real significance of all of that evidence (including the social worker's report) is to highlight what would be the possible suffering to the appellant in the event that she had to leave the United Kingdom, and her husband and immediate family remained here. Whilst I accept that there is clearly a grandparent/granddaughter relationship, it is not so significant in the sense that she plays a major part in the child's upbringing, to mean that it would be unfair and wrongful interference with it if she had to leave”

9. The appeal is thereby dismissed.

Discussion and Findings

10. The primary submission made by Mr Ogunbusola is that the determination is flawed for a failure to make a finding in respect of the best interests of M, the Appellant's granddaughter, and in failing to take material evidence into account, namely the views of social worker Ms Okanlami on that matter.
11. I am not satisfied that the Tribunal failed to have regard to the position of M, or that it ignored the evidence of Ms Okanlami. At its highest her report was to the effect that M has a close bond with her grandmother, and that she has benefitted from the stability that her family has provided her with. Her grandmother is a practising Christian who has set a “good Christian moral standard” for her. The Appellant's daughter-in-law explained how much help the Appellant was when M was born prematurely and how she was a “pillar of help” to her. Looking at the determination as a whole, and having particular regard to paragraph 36 (set out above) it appears that the Tribunal accepted all of that to be true. The determination nowhere rejects the evidence that the Appellant looks after M two days a week, or that they enjoy a close relationship. The Tribunal was just not satisfied that this was sufficient reason to justify a grant of leave to remain on human rights grounds.

12. I am satisfied that in light of its overall findings that was manifestly a decision open to the Tribunal to take. On the one hand the Tribunal was faced with an individual who is a loving a caring role model for her young granddaughter. Obviously the child would like to continue to see her grandmother and will be upset if she doesn't. Against that were very substantial countervailing factors that weighed heavily in the public interest. First, the finding that the Appellant had come to this country as a visitor with the express intention of overstaying and using NHS services to which she was not entitled; second, that in the 12 years that she had lived in this country prior to the appeal she has in fact made extensive use of the NHS; third, that she has not told the truth about the extent of her family connection to Nigeria; fourth, that she has remained here for many years without leave even after applications were rejected and she was advised that she should leave the country. Balancing all of those factors the Tribunal was entitled to find the wishes - or best interests - of M were outweighed. I would add that this case has been put on an 'all or nothing' basis, ie that if the Appellant were to lose her appeal she and M would be facing long term or permanent separation. As the First-tier Tribunal observed, this is plainly not so. The Appellant's husband is earning in excess of the minimum income requirement and there is absolutely no reason why she should not be expected to return to Nigeria and make an application for entry as a spouse in the normal way. The evidence of Ms Okanlami and other family members fell far short of establishing that there would be any real detriment to M should her grandmother go back to Nigeria for a short period.
13. Given the lack of clarity about what the grounds actually were it is appropriate that I deal with the matter of Article 8 within the rules. The Tribunal plainly misdirected itself at paragraph 25 when it recorded that the "common test" under Appendix FM and paragraph 276ADE(1)(vi) is whether there are insurmountable obstacles to return to Nigeria.
14. Under the 'exception' provision for overstayers at EX.1 of Appendix FM the test is whether there are "insurmountable obstacles to family life continuing outside the United Kingdom". That required the Tribunal to consider the circumstances that the Appellant *and her husband* would face together if they returned to live in Nigeria. It is apparent from the findings at paragraph 26-28 that the Tribunal did not consider this high test to be met. It rejected as not credible the claim that the Appellant's husband had extinguished all connection with Nigeria. Both he and Appellant had lived and grown up in that country and had retained social and cultural links. The evidence that they no longer had family networks there is rejected.
15. By contrast paragraph 276ADE(1) of the rules is concerned with the private life of the Appellant alone. Under that provision she is required to demonstrate that there would be "very significant obstacles" to *her* integration in Nigeria. This is a less exacting test than that in EX.1 but on the evidence, and findings, it still was not met. The Appellant had not demonstrated that she would face any particular difficulties at all in returning to her country of origin and nationality.

Decisions

16. The decision of the First-tier Tribunal does not contain a material error of law and the decision is upheld. The Appellant's appeal is dismissed.
17. There is no order for anonymity.

Upper Tribunal Judge Bruce
20th August 2018