



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01651/2019

THE IMMIGRATION ACTS

**Heard at Manchester
On 15th October 2019**

**Decision & Reasons Promulgated
On 29th October 2019**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KAFAYAT [A]
(ANONYMITY DIRECTION NOT MADE)**

Claimant/Respondent

Representation:

For the Appellant: Mr Diwnycz, a Home Office Presenting Officer
For the Claimant/Respondent: In Person

DECISION AND REASONS

1. The claimant is a citizen of Nigeria born on 23rd April 1985. She entered the United Kingdom on a visitor's visa in September 2013, thereafter overstayed. A number of applications made for leave to remain were refused. She has a partner who is said to be the father of her three children.
2. The claimant seeks leave to remain on the basis of family and private life, which leave was refused by a decision of the Secretary of State for the Home Department dated 6th February 2019. It is said in that decision that neither she nor her children, nor her partner meets the requirements of

the Immigration Rules, nor are there any exceptional circumstances which would prevent her removal to Nigeria.

3. The claimant sought to appeal against that refusal. The appeal came before First-tier Tribunal Judge Herbert OBE for hearing on 2nd May 2019.
4. Although the Judge found the claimant to be altogether lacking credibility as to the immigration history, he nevertheless went on to find that there were circumstances under Article 8 of the ECHR which would make her removal disproportionate.
5. The Secretary of State sought to appeal against that decision and permission to do so was granted on 10th July 2019 in these terms:

“I am satisfied that there are arguable errors of law in this decision. The Judge’s findings are based on the evidence of the appellant, who he found not to be credible in her asylum claim and that of her partner. There is an absence of documentary evidence, but particularly in relation to children, as a result of which the Judge speculates. There is no proper consideration of the public interest and no proper consideration of exceptionality. There is no consideration to the cost to the NHS bearing in mind the medical difficulties the family faces. Further, in relation to Section 117B the Judge finds that the appellant and her partner can work (paragraph 52) but gives no reasons as to how, given his previous findings. The Judge fails to address the burden of care for the family in the United Kingdom. Further the Judge’s findings are insufficiently reasoned and at times inconsistent, given the evidence that was before him.”
6. It was the claim of the claimant that she had been forced into prostitution in Nigeria and that she had been sexually exploited by her stepmother for financial gain for sexual services. She claimed that she managed to escape in December 2012. The Judge did not find the claimant to be credible in any respect as to the circumstances of that claim and dismissed her appeal in respect of asylum and humanitarian protection.
7. Whilst in the United Kingdom the claimant had given birth to three children, namely twins who were at the time of the hearing aged 4 years old and a son who was but a few weeks old. She said that her partner Mr Adebayo suffered from ill-health and particularly poor sight.
8. The medical evidence noted that the claimant had chronic Hepatitis B infection. The children did not test for that condition but have been receiving injections to safeguard against it.
9. The Judge came to the conclusion in respect of the claim for prostitution and sexual exploitation that the case was fabricated.
10. Although there was no medical evidence, the Judge accepted that the claimant’s partner was blind in one eye and severely restricted in the other.

11. The Judge made a number of findings. The first finding was that there were insurmountable obstacles to the family's return to Nigeria. The reasons for this finding are set out briefly in paragraph 49 of the determination, namely that neither the claimant nor her husband were able to work or support the family; they had no accommodation or employment to return to, nor any family network to give support.
12. Although two children were free of Hepatitis the third was requiring ongoing care for at least twelve months. It was found the claimant's partner suffered from glaucoma.
13. In the detailed decision of 6th February 2019 the Secretary of State looked both at the merits of the claim and of the situation facing the claimant and her family upon return.
14. It was noted that the claimant was a Nigerian national who had lived in Nigeria the majority of her life. She spoke English and Yoruba. She had been educated to college level in Nigeria and had the education to find employment in Nigeria and that education would be available to her children in Nigeria. The children they were young enough to establish new relationships in Nigeria, and to benefit from the education regime and any health considerations. There were in effect no particularly vulnerable aspects of life that fell to be addressed could be dealt with in Nigeria.
15. In paragraph 49 of the determination the Judge concludes that there were insurmountable obstacles to return for the reasons that have been advanced. The Secretary of State contends that no adequate analysis was given by the Judge as to why that situation should indeed exist. There was for example no analysis as to the support which would be available to the appellant's family in Nigeria and no consideration of any country guidance or any indication as to what basis the hardship was found to be established.
16. The fact that the partner had difficulties with his eyes and suffered from glaucoma there was not, it was submitted, a reason to find that he could not return to Nigeria. There were plenty of hospitals and care that could be available to assist him in that respect. Although the Judge found him to be vulnerable the Judge did not specify in any detail or at all or where and how that vulnerability would arise.
17. The fact that the claimant and partner have no accommodation or employment did not necessarily mean they would be unable to find such were they to arrive in Nigeria. There is no consideration of any country guidance case to highlight any potential difficulties which might arise in practice. That the claimant and husband may indeed face difficulties is fairly obvious, whether such are insurmountable obstacles need, as I so find, more careful analysis and justification upon the facts.

18. The Judge highlighted that circumstances would impact harshly upon the children but does not clarify with any degree of precision what those might be.
19. The Judge indicated that the children will become destitute without a safety net in Nigeria. No reference is made to any country guidance that may indicate that that applies. The youngest child is undergoing injections in order to make sure that he is safe from Hepatitis B. It is difficult to understand what would be the complication for such treatment in Nigeria. That there may be serious complications developing with the youngest child is as a matter of speculation without any tangible medical evidence in support.
20. As has been argued on behalf of the Secretary of State, this is not a challenge as to the merits of the decision for that would be outside the scope of this appeal, but rather a challenge to the reasons or lack of reasons which are given to be justified.
21. The claimant's partner, who attended the hearing, indicated that he cannot see from one eye and has limited vision in the others and has undergone a number of operations particularly in May and September of this year. It is said that there was undue pressure put on the eyes and he has been put on tablets to reduce the blood pressure. There is no sight in the left eye and low vision in the right one. He is undergoing another operation on 17 October. Medical documents were presented to show the ongoing injections for the younger child in relation to Hepatitis B and the protection therefrom.
22. It is argued on behalf of the Secretary of State that, although this is a case that has a number of compassionate features about it, it does not reach the level of exceptionality. Given the findings adverse to the credibility of the claimant and indeed the findings of fabrication, it was submitted that in those circumstances the Judge ought to have been engaged in the task of weighing up very much more carefully the public interest in the removal of the claimant and family.
23. Having looked at all matters and bearing in mind of course the importance to distinguish what is an argument as to merit from one pointing to an error of law, I do find that the decision as a whole is inadequately reasoned and that there is a lack of justification clearly expressed as to why exceptionality is engaged in this particular case.
24. In those circumstances the decision shall be set aside to be remade. I note the Senior President's Practice Direction. As credibility lies at the heart of such matters will be a rehearing particularly focused as to Article 8 and return.
25. Given that there was no challenge to the findings as to the lack of asylum or humanitarian protection it may be that such matters should be preserved but I do not exclude argument to the contrary if placed before

the Tribunal Judge for that Judge to determine that issue. Any further directions will be a matter for the First-tier Tribunal.

Notice of Decision

The Secretary of State's appeal before the Upper Tribunal succeeds. The decision of the First-tier Tribunal should be set aside and be remade in the First-tier Tribunal.

No anonymity direction is made.



Signed

Date 28 October 2019

Upper Tribunal Judge King TD