



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

Appeal Number: IA/33108/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 13 October 2015**

**Promulgated**

**On 14 October 2015**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**LAURETTA TOBE OKOBI**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Jones, Counsel, instructed by Waterstone Solicitors

For the Respondent: Ms Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Bennett who, in a decision promulgated on 09 July 2014, dismissed the Appellant's appeal against a refusal by the Respondent to grant her a further period of leave to remain on the basis of her private and family life and against a decision to remove her from the UK.

**Background**

2. The appellant is a national of Nigeria, date of birth 26 February 1983. She entered the United Kingdom on 11 October 2010 as a Tier 4 Student. She made an in-time application for further leave to remain on a form FLR(O) on 28 May 2012 indicating that she was still enrolled on a International Management course, that she was a single woman whose family all resided in the United Kingdom, that she had commenced a relationship with a young Nigerian man and was pregnant through him, and that she was being provided for by her parents and her siblings. The thrust of the application was that her removal, in light of the aforementioned circumstances, would constitute a disproportionate breach of Article 8 ECHR.
3. Her application was refused by the Respondent on 17 July 2013 and, on the same day, a decision was made to remove the Appellant under Section 47 of the Immigration, Asylum and Nationality Act 2006. The Respondent considered the application under both Appendix FM and paragraph 276ADE, both provisions having come into force on 9 July 2012. The Respondent was not satisfied the Appellant met the requirements of the immigration rules. Nor was the Respondent satisfied that the decision breached Article 8 ECHR. The appellant appealed these decisions to the First-tier Tribunal.

### **The decision of the First-tier Tribunal**

4. The Judge considered the evidence presented to him. The Appellant's child had been born but her relationship with the father of her child had broken down. The Appellant was being supported by her family (primarily her father) and she spent her days assisting her mother, who, it was claimed, was in very poor health. The Judge noted the Appellant's claim that she had no other family support in Nigeria. The Judge noted that the Appellant had worked in Nigeria.
5. It was argued on behalf of the Appellant that, as Appendix FM and paragraph 276ADE came into being after the Appellant's application, the Respondent's decision was 'not in accordance with the law' as the Respondent should have considered the Article 8 application unencumbered by any reference to the immigration rules. The Judge indicated that, with reference to the decision to refuse to vary the Appellant's leave to remain, it was appropriate for him to consider the application on the basis of the evidence before him with reference to any relevant provisions of the immigration rules in force as of 08 July 2012. However, in respect of the decision to remove the Appellant the Judge indicated, relying on paragraph 400 of the immigration rules (inserted by HC 194), that he was obliged to consider the possibility of any breach of Article 8 by reference to paragraph 276ADE and Appendix FM.
6. It was accepted by the Appellant's representative [17] that she could not succeed under Appendix FM. The judge noted that the only possible provision of the immigration rules under which the Appellant's

application could have been made was paragraph 317 (relating to adult dependent relatives). The Judge found, giving a number of reasons in support, that the Appellant would not be living in the most exceptional compassionate circumstances were she to return with her child to Nigeria. The Judge was satisfied the Appellant could continue to be supported by her family in the United Kingdom were she to be removed to Nigeria. The Judge was not satisfied there were any health reasons preventing the Appellant from returning with her child to Nigeria or looking for employment there. The Judge noted the absence of any independent documentary evidence to support the proposition that, as a single unmarried mother of a young child, the Appellant would be subjected to any kind of societal disapprobation or disadvantage. The Judge was not satisfied that the Appellant's mother was as ill as claimed and gave a number of reasons in support of this finding.

7. The judge then went on to consider whether the Appellant had established Article 8 composite private/family life relationships with her family in the United Kingdom with reference to the authorities of **Kugathas [2003] EWCA Civ 31** and **Ghising (family life - adults - Gurkha policy) [2012] UKUT 00160**. The Judge additionally considered the evidence relating to the Appellant's child and his duty under section 55 of the Borders, Citizenship and Immigration Act 2009 and was satisfied that their removal would not be detrimental to the child. The Judge took into account the public interest in immigration control and found, given a number of reasons, that this outweighed the Appellant's Article 8 rights.

### **The Grounds of Appeal**

8. The Grounds contended that the Judge should have remitted the appeal back to the Respondent to enable her to decide the case afresh given that the application was made prior to 09 July 2012 but the decision was made afterwards. It was claimed that the Respondent's decision was not in accordance with HC 194 and therefore not in accordance with the law.

### **Whether the First-tier Tribunal made a material error of law**

9. At the hearing Ms Isherwood provided me with a copy of **Singh v Secretary of State for the Home Department [2015] EWCA Civ 74**. I am satisfied that this authority fully disposes of the single Ground of Appeal. Following the amendments to the immigration rules brought on by HC 194, the immigration rules were again amended by HC 565. This introduced a new provision, A277C. this read:

**Subject to paragraphs A277 to A280 and paragraph GEN.1.9. of Appendix FM of these rules, where the Secretary of State is considering any application to which the provisions of Appendix FM (family life) and paragraphs 276ADE to 276DH (private life) of these rules do not already apply, she will also do so in line with those provisions.**

10. In the Court of Appeal's conclusions (at paragraph 56) it was noted that, when HC 194 first came into force on 9 July 2012, the Respondent was not entitled to take into account the provisions of the new Rules when making decisions on private or family life applications made prior to that date but not yet decided. But that position was altered by HC 565 – specifically by the introduction of the new paragraph A277C – with effect from 6 September 2012. As from that date the Respondent was entitled to take into account the provisions of Appendix FM and paragraphs 276ADE–276DH in deciding private or family life applications even if they were made prior to 9 July 2012.
11. As the decisions in the present appeal were made after 06 September 2012 the Respondent was lawfully entitled to take into account appendix FM and paragraph 276ADE. Ms Jones did not demur from this conclusion.
12. Ms Jones did however maintain that the Judge engaged in an unwarranted degree of speculation in stating, at paragraph 34, that the Appellant would obtain employment if given leave to remain.
13. In a very detailed decision the Judge carefully considered all the evidence before him. His analysis is impeccable and his conclusions on the facts were ones that were properly open to him. Having concluded that the Appellant could not succeed under the immigration rules the Judge then went on to consider whether her proposed removal would breach Article 8 as a free-standing right. The Judge identified the approach identified in **Razgar [2004] UKHL 27** and applied that approach to his factual findings. In his analysis he took account of all relevant considerations. I find no merit in Ms Jones's submission that the Judge engaged in unwarranted speculation at paragraph 34 when concluding that, if granted leave to remain, the Appellant would find employment. The Appellant has specifically indicated her wish to obtain employment in the United Kingdom (at paragraph 22(k)). In any event mere financial dependency, on the particular facts of this appeal, is not, without any more, capable of establishing family life (**Singh & Anor v Secretary of State for the Home Department [2015] EWCA Civ 630**).

### **Notice of Decision**

**The decision of the First-tier Tribunal contained no material error of law.**

**The appeal is dismissed.**

No anonymity direction is made.



14 October 2015

Signed

Date

Upper Tribunal Judge Blum