



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/12598/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Stoke**

**On 12 April 2016**

**Decision & Reasons  
Promulgated  
On 29 April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

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

Appellant

**And**

**HELEN SOLA SMITH  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr. A. McVeety, Senior Home Office Presenting Officer  
For the Respondent: Mr. B. Adewusi, Crown and Law Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Fowell, promulgated on 11 June 2015, in which he allowed Miss. Smith's appeal against the Secretary of State's decision to refuse to grant leave to remain on the basis of private and family life.
2. For the purposes of this appeal I will refer to the Secretary of State as the Respondent, and to Miss. Smith as the Appellant, reflecting their positions as they were before the First-tier Tribunal.

3. Permission to appeal was granted as follows:

“In my assessment at least the following strands of the grounds on which the respondent seeks permission to appeal are arguable:

- it is arguable that the judge had no proper basis for finding that the appellant would face very significant difficulties in integrating on her return to her country of nationality (Nigeria) (as per the respondent’s paragraphs 3 to 6); and
- it is arguable that the judge’s article 8 reasoning is flawed due to, amongst other things, a lack of attention to the factors set out in Part 5A of the Nationality, Immigration and Asylum Act 2002 (as per the respondent’s paragraphs 7 to 9).”

4. The Appellant did not attend the hearing. I heard oral submissions from both representatives, following which I reserved my decision.

Submissions

5. Mr. McVeety submitted that when the judge had dealt with the appeal, the test under paragraph 276ADE(1)(vi) was whether there were “very significant obstacles” to the Appellant’s integration on return to Nigeria. However this wording only appeared once in the decision at paragraph [33]. I was referred to paragraphs [30] and [31] where the judge referred to whether or not the Appellant had any ties in Nigeria. He submitted that there was no reference to the Appellant’s ability to reintegrate into society in Nigeria.
6. I was referred to paragraph [30] where the judge had raised doubts over the Appellant’s credibility and had referred to the issue of her mother’s death in this regard. If the Appellant’s mother had not died, she had ties to Nigeria. The case had been decided on the papers. While the case was unsuited to a decision on the papers, given that it was a paper case, it was also unsuited to a credibility finding. He submitted that there were major discrepancies in the evidence. The judge had not accepted that the Appellant’s mother was dead, and if the Appellant had family in Nigeria, they would be able to assist her on her return.
7. I was referred to paragraph [32]. Mr. McVeety submitted that it was an error to find that the “picture of a resourceful and skilled mother” was at odds with the social services report due to the fact that the Appellant had no access to public funds. This was due to the fact that the Appellant was here illegally and therefore could not work. He asked whether the judge was in fact suggesting that the Appellant should have worked illegally.
8. I was referred to paragraph [44] where the judge stated that too much had been made of the Appellant’s status as an overstayer. Mr. McVeety submitted that this should be a starting point as the Appellant had illegal use of UK resources. The fact that she was an overstayer had to weigh heavily in the balance.

9. He submitted that there was no lower standard of proof in relation to a finding of trafficking. Given that the discrepancies referred to in paragraphs [27] and [30] had not been addressed, it was an error of law to accept that the Appellant had been trafficked. There were major credibility issues.
10. I was referred to paragraph [47] where the judge found that, in the event that he needed to consider Article 8 outside the rules, there would not be any compelling circumstances in the Appellant's case to allow him to go outside the provisions of the immigration rules. Given that the judge had found that there would be very significant obstacles to the Appellant's integration into Nigeria, it was difficult to understand why he found that there were no compelling circumstances. The judge had not allowed the appeal under Article 8 outside the immigration rules, but the finding that there were no compelling circumstances to go outside the rules undermined the finding that there were very significant obstacles to the Appellant's reintegration into Nigeria. The decision was not clear.
11. Mr. Adewusi submitted that in paragraph [45] there was a reference to the Appellant's child who was over eight years old. That was why the appeal had been allowed. He submitted that paragraph [45] covered the consideration under section 55 which had been addressed in the skeleton argument before the First-tier Tribunal.
12. He submitted that the wrong test had not been applied under paragraph 276ADE(1)(vi). The case had been argued before the First-tier Tribunal on the basis that the Appellant's daughter met "the seven year rule". The caselaw pointed in the direction of allowing the appeal. I was referred to the case of PD and others (Article 8 - conjoined family life claims) Sri Lanka [2016] UKUT 00108 (IAC). He submitted that the decision had been allowed by reference to the Appellant's child.
13. Mr. McVeety pointed out that paragraph [45] started with the phrase "This may be to enter into speculation..." indicating that the appeal had not been allowed under paragraph EX.1 of Appendix FM. The decision did not reflect the fact that the Appellant had a child who was seven years old, and it had not been allowed on this basis. There had been no consideration of the Appellant's child's residence in the United Kingdom. In paragraph [45] it was clear that the judge was speculating. There had been no discussion of the Appellant's daughter's circumstances under paragraph EX.1, and no discussion of whether it was reasonable to expect her to leave the United Kingdom. The Appellant's appeal had been allowed under paragraph 276ADE.

#### Error of law

14. The decision is somewhat unclear, but I find that the judge allowed the appeal under paragraph 276ADE of the immigration rules. This is apparent from paragraph [33], which states:

“In all the circumstances therefore I find on the balance of probabilities that there will be very significant obstacles to her return and so the refusal of her application under the Immigration Rules was not in accordance with the law.”

15. It is also clear from the fee award where the judge states:

“The application ought to have been granted under paragraph 276ADE on the information available to the decision maker”.

16. I find that the judge did not allow the appeal under paragraph EX.1 of Appendix FM of the immigration rules with reference to the Appellant’s daughter. In paragraph [34] the judge states:

“As noted above, P meets the requirements of the immigration rules in her own right, subject to the question of whether it is unreasonable to expect her to go to Nigeria.”

However, there is no discussion of whether or not it is reasonable to expect the Appellant’s daughter to return to Nigeria. There are no reasons given for why it would not be reasonable for her to leave the United Kingdom. There is no full consideration of her position and, while the judge refers to the factors identified in paragraph [35] of EV (Philippines) [2014] EWCA Civ 874, there is no consideration of these factors.

17. Mr. Adewusi relied on the case of PD and others (Article 8 – conjoined family life claims). This case states in the headnote:

“In considering the conjoined Article 8 ECHR claims of multiple family members decision-makers should first apply the Immigration Rules to each individual applicant and, if appropriate, then consider Article 8 outside the Rules. This exercise will typically entail the consideration and determination of all claims jointly, so as to ensure that all material facts and considerations are taken into account in each case.”

However, paragraph [45], to which Mr. Adewusi referred, does not contain such an assessment of “all material facts and considerations”, and it is by no means clear that they have been taken into account.

18. The judge does not allow the appeal under paragraph EX.1 in paragraph [45]. This states:

“Accordingly, if it was necessary to decide the point, I should find that it was not it was not (sic) reasonable for Precious to leave the UK, and hence for that reason also, Mrs Smith would be entitled to remain, on the basis that she satisfies the requirements under the Immigration Rules (section EX.1) for leave to remain as a parent of Precious.”

19. The judge states that he is not deciding the point as it is not necessary given that he has already allowed the appeal under paragraph 276ADE. Contrary to the Respondent’s grounds of appeal, and as accepted by Mr.

McVeety, neither did the judge allow the appeal under Article 8 outside the immigration rules. This is clear from paragraph [46], and from the notice of decision.

20. Having allowed the appeal under paragraph 276ADE(1)(vi), I find that the judge made no clear findings as to why there would be “very significant obstacles” to the Appellant’s return as required under paragraph 276ADE(1)(vi). The only reference to “very significant obstacles” is found in paragraph [33], which is the final paragraph of the findings relating to paragraph 276ADE. In paragraphs [30] and [31] the judge refers to the fact that the Appellant has no ties, but this is not the test. I find that there is no proper consideration of why there would be “very significant obstacles” to the Appellant’s integration, and no clear reasons given for why the Appellant meets the requirements of paragraph 276ADE(1)(vi). I find that this amounts to an error of law.
21. Further, in relation to the finding that the Appellant has no ties, the judge finds in paragraph [30] that there are questions over the Appellant’s credibility. He states:

“It may well be that certain aspects of her account has (sic) been exaggerated in support of her claim, such as her mother’s death (and hence her son’s placement in an orphanage) and the period of homelessness before she left Nigeria - downplaying what may otherwise have been a more calculated attempt to enter the UK illegally - but even on the basis of the details given to social services it appears likely that there would be no real ties or support available to her in Nigeria.”
22. This is further to his finding in paragraph [27] that there are discrepancies by reference to the report of the assessment of the children carried out by social services. “It also notes that she has another child who lives in Nigeria with his maternal grandmother, i.e. the appellant’s mother.”
23. Given that it appears that the judge has not accepted the Appellant’s account of her mother’s death, and given that the social services assessment report notes that the Appellant has a child who lives in Nigeria with the Appellant’s mother, it is difficult to see how the judge has come to the finding that the Appellant has no real ties in Nigeria. I find that this failure to give clear and adequate reasons is an error of law.
24. While it may be that the skeleton argument before the First-tier Tribunal submitted that the appeal should be allowed on the basis of the Appellant’s daughter’s residence in the United Kingdom, the judge does not allow the appeal on the basis of the Appellant’s position as a parent of a qualifying child. As I have stated above, there is no assessment of the Appellant’s daughter’s circumstances, and there is no consideration of whether or not it is reasonable to expect her to return to Nigeria. This would be necessary in order for the appeal to be allowed under paragraph EX.1 of Appendix FM. There is no such consideration. It is by no means clear from this decision that it would be unreasonable to expect the Appellant’s daughter to leave the United Kingdom.

25. It is unfortunate that the Appellant elected for the appeal to be heard on the papers, as it is not a case suited to paper consideration. The judge found that there were inconsistencies in the evidence before him. Having found that these inconsistencies related to issues such as the Appellant's family in Nigeria, I find that the judge did not give adequate reasons for why he found that the Appellant had no ties in Nigeria.
26. It was accepted by Mr. McVeety that the appeal had not been allowed under Article 8 outside the immigration rules. The judge has referred to section 117B of the 2002 Act, factors to be considered when carrying out an assessment of Article 8 outside the immigration rules, but the consideration of these factors takes place after the judge has found that the Appellant's appeal should be allowed under paragraph 276ADE [33]. When considering Article 8 in paragraph [47], the judge finds that there were no compelling circumstances to allow him to go outside of the immigration rules, which puts into question his finding that there would be "very significant obstacles" to the Appellant's integration into Nigeria.
27. I find that the decision involves the making of a material error of law in the judge's failure to give clear and adequate reasons as to why the Appellant would face very significant obstacles to her reintegration on return to Nigeria, as required by paragraph 276ADE(1)(a).
28. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. I have already noted above, as was submitted by Mr. McVeety, that this case was unsuited to a paper hearing given the issues that it involves. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, and having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

### **Notice of Decision**

The decision involves the making of a material error of law and I set it aside.

The appeal is remitted to the First-tier Tribunal to be remade.

Signed

Date 27 April 2016

Deputy Upper Tribunal Judge Chamberlain