



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/23569/2014**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4<sup>th</sup> February 2016**

**Decision & Reasons  
Promulgated  
On 29<sup>th</sup> February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RENTON**

**Between**

**OYINMIEBI ANDRELLA ABEKI IGANGAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mr B Amunwa, Counsel, instructed by Ravi Sethi Solicitors  
For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a female citizen of Nigeria born on 26<sup>th</sup> February 1998. The Appellant first arrived in the UK on 30<sup>th</sup> August 2010 with her mother as a dependant child visitor and was granted leave to enter in that capacity until 5<sup>th</sup> February 2011. The Appellant's mother returned to Nigeria, but the Appellant overstayed in the care of her sister. The

Appellant eventually applied for asylum, but that application was refused on 16<sup>th</sup> May 2014 for the reasons given in the Respondent's letter of that date. The Respondent subsequently agreed to reconsider the Appellant's application on a human rights basis but maintained the decision to refuse leave to remain. The Appellant appealed that decision, and her appeal was heard by First-tier Tribunal Judge Mays (the Judge) sitting at Hatton Cross on 1<sup>st</sup> May 2015. He decided to dismiss the appeal for the reasons given in his Decision dated 1<sup>st</sup> June 2015. The Appellant applied for leave to appeal that decision, and on 13<sup>th</sup> October 2015 such permission was granted.

### **Error of Law**

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The issue of whether the Appellant was in need of international protection by way of asylum or humanitarian protection was not before the Judge. The Judge was also not required to decide if the Appellant qualified for leave to remain on human rights grounds under the Immigration Rules. The Judge dismissed the appeal on Article 8 ECHR grounds because he found the evidence of the Appellant lacking in credibility and as a consequence decided that the Appellant had first entered the UK intending not to leave, and that she had not been physically abused in Nigeria. Further, he found that it was not the case that the Appellant's mother had abandoned her and no longer wanted to have anything to do with her. The Appellant maintained contact with her mother, and it was possible for the Appellant to return to Nigeria to live with her mother who would give the Appellant financial and emotional support there. The Appellant was familiar with Nigerian culture, and it would be in her best interests to be with her biological mother in the country where she had been born and where she had other relatives. The Appellant was in good health, and in Nigeria would be able to make good use of the education she had received in the UK. The Judge accepted that the Appellant's removal would engage her Article 8 rights, but if removed she would be able to maintain contact with her sister by modern means of communication, and taking into account all these circumstances and the factors set out in Section 117B Nationality, Immigration and Asylum Act 2002, the public interest outweighed other considerations and therefore the Respondent's decision was proportionate.
4. At the hearing, Mr Amunwa argued that the Judge had erred in law in coming to that conclusion. He referred to the grounds of application and submitted that the Judge had erred by failing to comply with the provisions of the Joint Presidential Guidance Note Number 2 of 2010 relating to vulnerable witnesses. In particular, and although Mr Amunwa did not criticise the Judge's conduct of the hearing, the Judge had failed to comply with paragraphs 14 and 15 of the Guidance in that he had not made a finding as to vulnerability. This was an obligation when deciding credibility. The Judge had referred to the Appellant's distress at the hearing at paragraph 33 of the Decision, but this alone was insufficient to

discharge the duty imposed upon the Judge by the Guidance. The Judge should have considered the evidence in line with the comments made at paragraphs 26 and 27 of **JL (Medical Report - Credibility) China [2013] UKUT 00145 (IAC)**.

5. Mr Amunwa then argued that the Judge had further erred by failing to give adequate reasons for his credibility findings. In particular, the Judge had relied upon an assumption at paragraph 34 of the Decision as to when the Appellant had disclosed her mistreatment to her sister.
6. Finally, Mr Amunwa submitted that the Judge had again erred when carrying out the balancing exercise necessary for an assessment of proportionality. He had failed to give sufficient weight to the delay of more than two years by the Respondent in dealing with the Appellant's application for leave to remain.
7. In response, Mr Clarke argued that there had been no such errors of law. The Judge had made it abundantly clear in his Decision that he was aware that he was dealing with a child and therefore a vulnerable person. It was implied that the Judge found the Appellant to be vulnerable. The Judge had recorded in the Decision the Appellant's demeanour at the hearing, and had taken this into account when deciding credibility. The Judge had made a thorough analysis of the evidence and gave a full explanation for his findings. The Judge had not relied upon any assumptions, and had properly carried out the balancing exercise to decide proportionality.
8. I find no error of law in the decision of the Judge which I do not set aside. It is true that the Judge did not make a specific finding as to the vulnerability of the Appellant, but I am satisfied that this is not a material error of law because it is apparent from what the Judge wrote in his Decision that he was fully aware that the Appellant was a child at the date of the hearing and therefore vulnerable, and that the Judge took this factor into account when deciding credibility. The Judge recorded the date of birth of the Appellant in paragraph 1 of the Decision, and at paragraph 4 recorded Mr Amunwa's submission that the Appellant was a vulnerable child and that the Guidance applied to her. The Judge did not decide to the contrary. The Judge demonstrated his concern by enquiring if there was a responsible adult present, and arranged for the hearing to be in camera. At paragraph 5, the Judge referred to the need to treat the Appellant sensitively. Further, at paragraph 28 the Judge again referred to the Appellant's age and stated that she was a child for the purposes of Section 55 Borders, Citizenship and Immigration Act 2009. It was therefore necessary to treat her best interests as a primary consideration. Finally on this subject, at paragraph 33 of the Decision the Judge recorded that the Appellant was at times tearful and distressed when giving evidence. It is apparent from what the Judge wrote there that he took that factor into account when deciding credibility.
9. I find that the Judge in deciding credibility thoroughly analysed the evidence and gave a number of reasons for his decision at paragraphs 34 to 40 inclusive of the Decision. The Judge came to a decision which was

open to him on that evidence. Any assumption he may have made as to when the Appellant disclosed her mistreatment to her sister formed only a small and therefore immaterial part of this analysis.

10. Finally I am satisfied that the Judge carried out a proper and thorough analysis of the relevant evidence for the purpose of the balancing exercise necessary to decide proportionality. He explained why he found that the best interests of the Appellant would be served by her returning to Nigeria to live with her mother. The Judge explained his decisions as to what weight was to be attached to the various factors and was entitled to find from that analysis that the public interest carried the most weight. At paragraph 57 of the Decision the Judge dealt with the issue of delay and found that it was not so significant as to outweigh the need to maintain effective immigration control. That was a decision for the Judge. The facts in this case may be distinguished from those in **EB (Kosovo) v SSHD [2008] 3WLR 178** and therefore the decision of the Judge was not inconsistent with that case.

### **Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

### **Anonymity**

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed I find no reason to do so.

Signed

Date

Deputy Upper Tribunal Judge Renton