



IAC-FH-AR-V1

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

Appeal Number: IA/37278/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20 January 2016**

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

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**OYINLADE ALADEGBEMI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Staunton, Senior Home Office Presenting Officer
For the Respondent: Mr I Komusanac, Solicitor, Igor & Co Solicitors

DECISION AND REASONS

Introduction

1. For ease of reference, I shall refer to the parties as they were before the First-tier Tribunal. Thus, the Secretary of State is the Respondent and Ms Aladegbemi is the Appellant.
2. This is an appeal by the Respondent against the decision of First-tier Tribunal Judge Kelly (the judge), promulgated on 29 June 2015, in which he allowed the Appellant's appeal under the Immigration Rules (the Rules) pertaining to Article 8, specifically Paragraph 276ADE.

3. The Appellant's appeal to the First-tier Tribunal had in turn been against the decision of the Respondent, dated 4 September 2014, to remove her from the United Kingdom by way of directions under Section 10 of the Immigration and Asylum Act 1999. This decision had followed a somewhat protracted (but not entirely uncommon) procedural history involving decisions without a right of appeal and subsequent judicial review claims.

Proceedings before the First-tier Tribunal

4. The Appellant, a citizen of Nigeria born on 25 November 1995, came to this country in January 2006 with her mother and elder sister. Before the judge the argument was put that the Appellant's Article 8 claim should succeed first of all under the Rules themselves, or alternatively outwith them.
5. In respect of the Rules, Paragraph 276ADE(1)(iv) and (vi) were relied on by the Appellant's representative. In reaching his decision, the judge made reference to the well-known decision of the European Court of Human Rights in Maslov [2008] ECHR 546 and also referred to an unreported decision of the Upper Tribunal entitled RMJA (no appeal reference number being provided). In relying on these decisions in paragraph 27 of his decision, the judge stated that he would expect "very weighty reasons" to justify a decision to remove the Appellant from the United Kingdom. He went on to criticise the reasons provided by the Respondent in support of removal and concluded that it would not be reasonable for the Appellant to leave this country. The appeal was therefore allowed, in the first instance, on the basis of Paragraph 276ADE(1)(iv).
6. The judge then proceeded to make an alternative finding in respect of Paragraph 276ADE(1)(vi). He directed himself to the relevant test within that provision, namely whether "very significant obstacles" to the Respondent's integration into Nigerian society would exist if she were forced to return to that country. In paragraphs 30 to 31 the judge considered a number of factors relating to the Appellant's particular circumstances and once again criticised the reasoning of the Respondent in support of removal. The judge found that very significant obstacles to reintegrating did in fact exist and therefore allowed the appeal on this alternative basis.

The grounds of appeal and grant of permission

7. The Respondent sought permission to appeal on two grounds. In respect of Paragraph 276ADE(1)(iv) it is said that the judge had erred in relying on the unreported Upper Tribunal decision and had also misdirected himself to Maslov.
8. Ground 2 relates to Paragraph 276ADE(1)(vi). Paragraphs (b) and (c) of this ground reads as follows:

“...these factors [those stated in paragraph 30 of the judge's decision] do not establish that the [Appellant] would experience very significant

obstacles to integrating into Nigerian society. The First-tier Judge has failed to consider that the [Appellant] has grown up within a Nigerian family exposed to the cultural and social norms of the country, the official language of Nigeria is English and there is a possibility that the [Appellant] would be returning with her mother and sister pending the outcome of their appeals.

The Secretary of State asserts that the First-tier Tribunal Judge's assessment of what constitutes very significant obstacles is superficial and fails to properly establish why the respondent would be incapable of integrating into the country of her nationality."

9. Permission to appeal was granted by First-tier Tribunal Judge Heynes in a brief decision dated 17 September 2015.

The hearing before me

10. Both representatives confirmed that the Appellant's last application was in fact made to the Respondent in December 2012, and in terms of her decision the Respondent had accepted throughout that the Appellant had been under eighteen and in the United Kingdom for seven years for the purposes of Paragraph 276ADE(1)(iv) (see also page 2 of the reasons for refusal letter, dated 4 September 2014).
11. Mr Staunton relied on the grounds of appeal. In respect of Paragraph 276ADE(1)(iv), he submitted that there were errors in the reliance on the unreported case and a misdirection as to the effect of the Maslov decision. If these errors had not been committed, he submitted that the judge may have decided the issue differently, as there is a material difference between the reasonableness test and the very weighty reasons test.
12. In respect of Paragraph 276ADE(1)(vi), Mr Staunton submitted that the judge had not taken certain factors into account and that these were material. He did however accept that this ground of appeal and his submissions thereon gave rise to the danger of appearing to re-argue points already made before and rejected by the First-tier Tribunal.
13. Nothing was said about the Appellant's mother and sister whatsoever.
14. Mr Komusanac submitted that the Maslov decision had been given effect to in the Immigration Rules and that in any event the judge's findings at paragraphs 30 and 31 could apply equally to his assessment under paragraph 276ADE(1)(iv). He noted that the reasons for refusal letter had referred to family life but had not in effect considered private life.
15. In respect of Paragraph 276ADE(1)(vi), it was submitted that the judge had in fact taken everything relevant into account and had not left anything out of account: there was no error in relation to the alternative finding.

Decision on Error of Law

16. I find that the judge did err in respect of his consideration of the Maslov decision and his reliance upon the unreported decision of the Upper Tribunal. It is clear that the very weighty reasons test, if it can be described as such, applies where the individual concerned has been lawfully present in the host country. That is not the case with the Appellant in this appeal. The judge failed to have regard to this important factor and thus misdirected himself.
17. In terms of the unreported Upper Tribunal decision, there had been no compliance with paragraph 11 of the Practice Direction. In addition, no proposition of law has been identified in respect of the unreported decision. In any event, I note from the quotation at paragraph 13 of the judge's decision that there was a distinguishing factor in the RMJA case, namely that the individual there had been born in this country, unlike the Appellant in the appeal before me.
18. The question is whether these errors are material to the outcome of the appeal. In my view they are not. My reasons for this conclusion are as follows.
19. First, in relation to Paragraph 276ADE(1)(iv) and having considered the judge's decision as a whole and in particular the unchallenged factual matters in paragraphs 30 and 31, I conclude that if the errors are stripped out of paragraph 27 and the general guiding principles to the issue of reasonableness and lengthy residence are applied (see, for example Azimi-Moayed [2013] UKUT 419 and EV (Philippines) [2014] EWCA Civ 874), the result would have been the same: return to Nigeria would have been deemed unreasonable.
20. Second, and in any event, I find that the alternative conclusion on Paragraph 276ADE(1)(vi) was one that was open to the judge in all the circumstances. He directed himself correctly to the relevant test to be applied, namely whether very significant obstacles to reintegration existed in this case. He took a number of relevant factors into account including: the time the Appellant had spent in this country; the well-established links in education, friends and family; the limited ties with Nigeria; and the fact that her understanding of Nigeria and of Nigerian culture were "weak" and had "dissipated over the course of time". The judge had clearly been impressed by the "straightforward" and "wholly persuasive" manner in which the Appellant gave her evidence. There is no suggestion that he was not entitled to reach any of these findings.
21. Third, contrary to the suggestion in the grounds of appeal, the judge did in fact consider matters put forward by the Respondent; however, he deemed them to carry relatively little weight. In particular he found that the reasons set out in the reasons for refusal letter were vague and generalised in their nature. He took the view that the assertions that the Appellant had knowledge of Nigeria and/or Nigerian society as part of the

diaspora in the United Kingdom were wholly unspecified and lacking in substance. Having examined the relevant passages of the letter for myself, the judge's conclusions were open to him.

22. Fourth, having regard to the grounds, in particular paragraphs 2(b) and (c), it is apparent to me that the challenge to this alternative conclusion by the judge was in reality what may be described as a thinly veiled irrationality challenge, something the President has recently highlighted with disapproval (Greenwood No. 2 [2015] UKUT 629 (IAC)). The contents of paragraphs 2(b) and (c) of the grounds strongly indicate that Respondent's position is in truth simply a disagreement with the conclusions of the judge without identifying any misdirection in law or a failure to take material issues into account. I also note that there have been no challenges to the actual findings of fact reached by the judge.
23. I do take on board the fact that English is an official language in Nigeria. But that was only one factor considered by the judge and even if the judge had been wrong to take cognisance of this point, it does not undermine the totality of his conclusion on the particular issue with which I am concerned. Although there is reference to the Appellant's mother and sister, there is no evidence before me from the Respondent that these two individuals are facing imminent removal or indeed what their position in this country currently is.
24. In light of the above, the Respondent's appeal to the Upper Tribunal fails. There being no material errors of law in the decision of the First-tier Tribunal, that decision shall stand.

Notice of Decision

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

The decision of the First-tier Tribunal, allowing the appeal under the Immigration Rules, stands.

No anonymity direction is made.

Signed

Date: 28 January 2016

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 28 January 2016

Deputy Upper Tribunal Judge Norton-Taylor