



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: IA/52192/2013

THE IMMIGRATION ACTS

Heard at: Field House
On 12 May 2016

Decision promulgated
On 19 May 2016
Before

Upper Tribunal Judge Gill

Between

Christine Madu
(Anonymity Order NOT made)

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr A Slatter, of Counsel.

For the respondent: Ms A Brocklesby-Weller, Senior Presenting Officer.

Decision and Directions

1. The appellant, a national of Nigeria, has been granted permission to appeal the decision of Judge of the First-tier Tribunal M R Oliver who, in a decision promulgated on 28 September 2015, dismissed her appeal against the respondent's decision of 24 January 2014 to remove her from the UK. Judge Oliver dismissed her appeal under para 276ADE of the Statement of Changes in the Immigration Rules HC 395 (hereafter referred to individually as a "Rule" and collectively the "Rules") and on human rights grounds (Article 8).
2. The appellant's appeal had been previously heard in the First-tier Tribunal before Judge M D Dennis who, in a decision promulgated on 6 November 2014, allowed her appeal. However, permission to appeal against the decision of Judge Dennis was granted. In a decision promulgated in February 2015, Deputy Upper Tribunal Judge Shaerf set aside the decision of Judge Dennis in its entirety and remitted the appeal to the First-tier Tribunal for hearing afresh before a judge other than Judge Dennis.

Thus, the appeal came to be listed before Judge Oliver. I shall hereafter refer to Judge Oliver as the judge.

3. Before the judge, the appellant relied upon para 276ADE and her right to her private life under Article 8 outside the Immigration Rules. Her private life was said to have been established in the UK since her claimed arrival on 23 January 1997 at the age of 31 years. She did not rely upon Appendix FM or any family life in the UK.
4. The issue in this case is whether the judge materially erred in law by failing to make adequate findings of fact and/or give adequate reasons for his findings.

The respondent's decision

5. The respondent gave her reasons for refusing the appellant's Article 8 claim under para 276ADE and outside the Rules in a letter dated 24 January 2014 (the "RFRL").
6. In the RFRL, the respondent considered the documentary evidence submitted in support of the appellant's case. She drew attention to difficulties she saw in the documentation and stated that, at most, the documents showed that the appellant had been resident in the UK for a period of 13 years, from May 2000. In addition, she did not accept that the applicant had been continuously resident in the UK. She considered that, given that the appellant had lived in Nigeria for 31 years, she would not have lost all social, cultural and family ties to Nigeria. She concluded that the appellant did not satisfy the requirements of para 276ADE and that there were no exceptional circumstances that warranted the grant of leave outside the Rules.

The judge's decision

7. There was an issue before the judge as to whether the continuity of the appellant's residence in the UK had been broken by her absence from the UK in 2006. In this respect, the respondent contended that, on 4 May 2006, the appellant had made an application for entry clearance as a visitor lodged in Lagos, which was refused six days later. The appellant said that, although the photograph was genuine and the address given for her application was hers, she had not made the application because she was in the UK at the relevant time.
8. The appellant gave evidence before the judge to the effect, inter alia, that she was a victim of trafficking. She said that she had been trafficked to the UK with three or four other women to work as a prostitute. She ran away. Her mother in Nigeria was sick and she did not know how she would survive in Nigeria. She has never worked in the UK but sometimes received money from her church. She was in good health.
9. The judge found that the appellant did not satisfy the requirements of para 276ADE and that there were "*no exceptional or compassionate circumstances which in any wider consideration of Article 8 private life could possibly outweigh the public interest in the maintenance of a fair and firm immigration policy*". He therefore dismissed the appeal under the Rules and on human rights grounds.
10. The judge made his findings and gave his reasons at paras 12 and 13 of his decision, which read:

"12. For lack of evidence I ignore the possibility that continuity was broken in 2007 by an application for indefinite leave. The documents which founded the respondent's suspicion that the appellant was in Lagos in 2006 were clearly served on the appellant before the first appeal hearing and it is at least strange that no mention was made of this allegation in Determination. As I have set out above, however, I am bound to consider the

application under the new rules. Since Appendix FM cannot apply, the only path for this appellant would be to show under paragraph 276ADE that there would be very significant obstacles to her reintegration if she is returned to Nigeria. I do not doubt that she has strong ties in the United Kingdom.

13. I reject the picture painted of a victim trafficked for prostitution. The appellant was aged 31 when she came to the United Kingdom on a false passport. She has never had leave to remain and although she may never have been reliant on public funds she has certainly been reliant on her friends during her extensive stay. I find no exceptional or compassionate circumstances which in any wider consideration of Article 8 private life could possibly outweigh the public interest in the maintenance of a fair and firm immigration policy. Accordingly her appeal fails under the rules and under the wider consideration of Article 8."

Submissions

11. Mr Slatter submitted that the judge had failed to make the following relevant findings:
- i. as to the length of the appellant's residence;
 - ii. as to whether the continuity of the appellant's residence *had* been broken as opposed to merely leaving that issue to one side; and
 - iii. as to whether there were very significant obstacles to the appellant's reintegration in Nigeria.
12. Mr Slatter submitted that the judge had not given adequate reasons for rejecting the evidence of the appellant that she had been trafficked into the UK. It was insufficient to do so merely on the basis that she was 31 years old at the time. He gave no reasons for finding that there were no exceptional circumstances for the grant of leave on the basis of Article 8 outside the Rules. Any findings that the judge made were in the appellant's favour, i.e. that she had strong ties to the UK and that she was not reliant on state funds. He submitted that it could not be said that the errors were not material to the judge's decision, taken together with the fact that, if the appellant has lived in the UK since 23 January 1997, she will accumulate 20 years' continuous residence in January 2017.
13. Ms Brocklesby-Weller submitted that the judge had in fact implicitly found that there would not be very significant obstacles to the appellant's reintegration in Nigeria when para 12 of his decision is read together with para 6 (not quoted above) where the judge had reminded himself that he had to consider whether the appellant satisfied the requirements of para 276ADE before considering whether there were circumstances which allow or require him to consider the appeal in the wider context of the principles in R (Razgar) v SSHD [2004] UKHL 27. In essence, she submitted that that was the finding the judge implicitly made at para 12, a finding that (she submitted) was open to him to make given that there was nothing the appellant's case other than the length of her residence. Since she left Nigeria at the age of 31 years, it could not be said that there would be very significant obstacles to her reintegration in Nigeria. She was in good health. Her mother is in Nigeria. She has never worked in the UK but that does not mean that she could not obtain employment in Nigeria. Ms Brocklesby-Weller submitted that, on the appellant's evidence, she could not succeed under para 276ADE.
14. Ms Brocklesby-Weller submitted that the judge was entitled to reject the appellant's claim that she was a victim of trafficking. She is an adult who is relying on private life ties in the UK. She is able to look after herself. Her private life claim was essentially based on the length of her residence and her ties with her friends. There was no

evidence why her private life ties could not be replicated in Nigeria. In any event, only little weight had to be given to any private life established in the UK pursuant to s.117B(4) of Nationality, Immigration and Asylum Act 2002.

15. Ms Brocklesby-Weller submitted that, whether the appellant had lived in the UK since 1997 or since 2000, she could not have succeeded in her Article 8 claim outside the Rules. She submitted that this is why the judge did not need to make a finding as to whether the appellant had lived in the UK continuously since January 1997.
16. I heard Mr Slatter briefly in reply and reserved my decision.

Assessment

17. There was much force in Ms Brocklesby-Weller's submission that the judge had implicitly made a finding that there would not be very significant obstacles to the appellant's reintegration in Nigeria and, further, that the brevity of the judge's reasoning, particularly in relation to the Article 8 claim outside the Rules, may have been due to the fact that there was not much in the appellant's case.
18. It is a question of judgment whether it is appropriate in this particular case to conclude that the judge had implicitly found that there would not be very significant obstacles to the appellant's reintegration in Nigeria. Such were the shortcomings, cumulatively, in the decision that I concluded that this is not a case where the judge had made implicitly made such a finding but a case where the judge in fact omitted to make a finding as to whether there were very significant obstacles to the appellant's reintegration in Nigeria.
19. Likewise, such were the other shortcomings in the decision of the judge that I concluded that it is not the case that the reason for the lack of other findings or reasoning is that the judge considered that the appellant could not succeed, whether under the Rules or outside the Rules and whether or not she had been continuously resident in the UK since January 1997. This is a case of a judge having simply failed to engage with the evidence in the case before him. It is not that he considered that the appellant could not succeed even if she has been continuously resident in the UK since January 1997.
20. The other shortcomings referred to above were as follows:
 - i. the failure to the judge to make a finding as to the length of the appellant's residence. It was plain that this was in dispute between the parties;
 - ii. the failure to the judge to make a finding as to whether the continuity of residence had been broken; and
 - iii. the failure of the judge to give any, or any adequate, reasons for rejecting the appellant's evidence that she was a victim of trafficking. In this respect, I have some difficulty with Ms Brocklesby-Weller's submission that the judge did give reasons, in that, he had said that the appellant was aged 31 years when she came to the UK on a false passport. It is not self-evident that the appellant's age precluded the possibility of her being a victim of trafficking. That she arrived on a false passport does not preclude that possibility either.
21. Whilst I acknowledge that, on the evidence before the judge, the appellant had difficulties in succeeding under para 276ADE(vi) and outside the Rules, I cannot say that she cannot succeed on any legitimate view.

22. Accordingly, I am satisfied that the judge materially erred in law, in that, he failed to make relevant findings of fact and give any, or any adequate, reasons for relevant findings of fact. I therefore set aside the decision of the judge in its entirety.
23. The effect of my decision is that the appellant's appeal will need to be determined on the merits on all issues.
24. In the majority of cases, the Upper Tribunal when setting aside the decision will be able to re-make the relevant decision itself. However, the Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal at para 7.2 recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:
 - “(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party’s case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.”
25. I am aware that this appeal has been previously remitted to the First-tier Tribunal. Nevertheless, such is the extent of judicial fact-finding that it is appropriate for this appeal to be remitted to the First-tier Tribunal. Mr Slatter and Ms Brocklesby-Weller agreed that, if I set aside the decision of the judge, this case comes within para 7.2 of the Practice Directions.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety. This case is remitted to the First-tier Tribunal for a hearing on the merits on all issues by a judge other than Judges of the First-tier Tribunal M R Oliver and M D Dennis .



Signed
Upper Tribunal Judge Gill

Date: 12 May 2016