



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

Appeal Number: HU/02301/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 29 June 2017**

**Decision &
Promulgated
On 21 July 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

**REBECCA [U]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Haywood, Counsel, Southwark Law Centre
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal (Judge R G Walters) dismissing her appeal against the respondent's decision of 7 January 2016 refusing leave to remain on the basis of her private and family life.

2. The background to this appeal can briefly be summarised as follows. The appellant is a citizen of Nigeria born on [] 1968. She entered the UK on 13 May 2001 on a visit visa valid until 31 July 2001 and then overstayed. She had left her two children, her son J and daughter S, with a friend or relative in Nigeria but in 2005 she arranged for them to be brought unlawfully into the UK. On 31 October 2010 the appellant applied for leave to remain on human rights grounds but her application was refused with no right of appeal on 17 August 2010.
3. There were two reconsideration requests in 2011 and 2012 and on 9 March 2015 the appellant submitted a human rights claim which was refused and certified on 8 June 2015. Further submissions were made on her behalf in November 2015 and January 2016 and these were accepted as a fresh claim, which was refused on 7 January 2016. The respondent was not satisfied that the appellant could meet the requirements of the Rules for leave to remain on private life grounds under para 276ADE or that the application raised any exceptional circumstances justifying a grant of leave outside the requirements of the Rules.
4. When setting out his findings of fact the judge noted that the appellant said in her statement that she had come to the UK to work and send money back to support her children who were being looked after by a friend and then she arranged for them to be smuggled into the UK in 2005. She was able to work regularly until 2008 when employment opportunities diminished. She lived in a two bedroom flat, subletting the two bedrooms and managed to make some money by childminding.
5. The appellant's daughter S has been granted limited leave to remain in the first instance for 30 months. There is no communication between the appellant and S or between S and J. On 2 January 2016 J was also granted limited leave to remain for 30 months under para 276BE(1), having met the requirements of para276ADE(1)(v) of the Rules as he was aged over 18 and under 25 and had lived in the UK for more than half his life.
6. The judge referred to evidence about J's mental health noting that there had been contact with the Lewisham Children and Adolescent Mental Health Service and a family therapist. A letter from the family therapist dated 18 June 2013 outlined J's history stating that he was discharged from the Mental Health Service in January 2013 and arrangements had been made for him to be mentored on a scheme set up for young people with mental health problems. There was also evidence in a fax dated 23 February 2017 confirming that J was under Secondary Mental Health Services and was presently quite dysfunctional and required the constant support of his mother to function at all. There was an assessment report from an independent social worker dated 20 December 2016 stating that J was fully dependent on his mother for all aspects of his practical and emotional care needs.

7. The judge found that the appellant had a family life with J as he was more than normally emotionally dependent upon her and that removing her would be an interference with the exercise of her right to respect for her private and family life with consequences of such gravity as potentially to engage the operation of article 8. He found that the interference would be in accordance with the law and that the interference was necessary in the interests of the economic wellbeing of the country through the maintenance of immigration control.
8. He went on to consider the issue of proportionality taking into account S117A - D of the Nationality, Immigration and Asylum Act 2002 as amended ("the 2002 Act"). He noted the evidence in a letter of 24 November 2015 from a senior community practitioner with the Lewisham Assessment and Liaison Service to J's GP that J had taken to his room, had stopped communicating with others and was not following his college course following an unfavourable decision by the Home Office about his right to remain in the UK but said that he had now been granted 30 months' leave and given the right to work lawfully. The judge said that he would have expected J to have gained some employment by now if only to help his mother who was extremely financially stretched and that she apparently cooked for him, cleaned and worked long hours as a child carer to provide for him.
9. The judge said there was a further option open to the appellant of returning alone to Nigeria and in any event, there was nothing to prevent J accompanying her. He apparently had suitable qualifications for admission to a university in the UK and no doubt could apply for university in Nigeria or, alternatively, gain employment there. Having considered all the evidence the judge found that the interference was proportionate to the legitimate public end to be achieved. The appeal was dismissed on human rights grounds.

The Grounds and Submissions

10. In the grounds of appeal it is argued that the judge failed to confront the separation of the appellant and J in article 8 terms and had therefore failed to consider a key issue in the appeal, whether the breakup of family life would breach the appellant and J's rights under article 8. It is then argued that the judge erred by taking into account the fact that J had not gained employment since being granted leave to remain and that what he would or would not have expected in terms of J's ability to work was not relevant to the assessment of proportionality. Finally, the grounds argue that the judge failed to take J's mental health into account in the proportionality assessment.
11. Permission to appeal was granted by the First-tier Tribunal for the following reasons:
 - "3. Despite the appellant's truly abysmal immigration record and history of flouting immigration control, it is arguable that the judge may not have

adequately assessed the adverse impact on the rights of her adult child who was found had more than a normal emotional dependency on her given his mental health problems. All grounds may be argued.”

12. Mr Haywood adopted the grounds submitting that the judge had failed to consider all relevant issues in the proper way and had failed to take material matters into account. He had failed to take proper account of the report from the independent social worker or to consider the effect of the appellant being separated from J. When assessing article 8 the judge appeared to have moved between private and family life, conflating those issues. He had failed to consider J’s mental health and his requirements when assessing proportionality.
13. Mr Kotas submitted that the judge had reached a decision properly open to him. There had been no evidence from J at the hearing and at [37] the judge had noted that the appellant’s solicitor, who had also represented J, said that he did not attend appointments and he had had great difficulty getting signatures on documents which eventually allowed the respondent to grant him leave. He had spent the four weeks before the hearing making phone calls asking J to appear as a witness but he had not replied. In so far as family life was relied on, the fact that it was precarious was a proper factor to be taken into account: Rajendran (s117B - family life) [2016] UKUT 138.

Consideration of Whether the Judge Erred in Law

14. I must consider whether the judge erred in law such that the decision should be set aside. I am not satisfied that he did for the following reasons. The primary argument is that the judge failed to confront the issue of the separation of the appellant and J and failed to take into account his mental health and his dependence upon the appellant. I am satisfied that the judge was well-aware of this and took these matters into account. He has set out the contact between J and Lewisham Children and Adolescent Mental Health Service and has referred to the more recent evidence about J’s contact with the Secondary Mental Health Services and the assessment report from the independent social worker. The judge accepted that J’s emotional dependence on the appellant was such that there was family life within article 8(1) and that her removal would have consequences of such gravity to engage the operation of article 8.
15. It was then for the judge to balance the public interest in the maintenance of proper immigration control in the interests of the economic wellbeing of the country with the impact of the decision on the private and family life of the appellant and J. The appellant has a very poor immigration history. She overstayed since her visa expired in July 2001 and was frank that she had come to the UK to work and send money back to her children. She then arranged for her children to be brought unlawfully to the UK. It is correct that she has worked but she has had no entitlement to do so. She is unable to meet the requirements of the Rules for leave to remain. There is a very strong public interest in enforcing immigration control

against those who so deliberately seek to subvert the provisions of the Rules.

16. It is argued that the judge failed to confront the issue of the appellant being separated from J but that issue is considered in [51]. The judge was entitled to make the point that J had the option of returning with the appellant to Nigeria and, in the light of the fact that he apparently had suitable qualifications for university in the UK, that he could apply for university in Nigeria or gain employment there. The judge was fully aware of the evidence about J's current mental and emotional situation although there was no evidence before the judge directly from J. I am not satisfied that the judge's comment that he would have expected J to have obtained employment by now indicates any error of law in his approach to the assessment of proportionality. There is no substance in the argument that the judge failed to take J's mental health into account when assessing proportionality.
17. The judge considered the provisions of S.117A-D of the 2002 Act noting that the appellant's immigration status had been precarious since 2001. I am not satisfied that the judge in any way conflated the issues about private and family life. As Rajendran confirms, precariousness is a criterion of relevance to family life as well as private life. On the evidence before him the judge was entitled to find that the interference with the private and family life of the appellant and J did not outweigh and was proportionate to the public interest in maintaining immigration control. His decision was properly open to him for the reasons he gave.

Decision

18. The First-tier Tribunal did not err in law and it follows that the decision stands. No anonymity direction was made by the First-tier Tribunal.

Signed H J E Latter

Date: 19 July 2017

Deputy Upper Tribunal Judge Latter