



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/01377/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6<sup>th</sup> July 2018

Decision & Reasons Promulgated  
On 28<sup>th</sup> August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MS. LATIFAT OMOBOLANTE ADUKE ALADE  
(NO ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the appellant: Mr. M Murphy, Counsel, instructed by Farani Taylor, Solicitors.  
For the respondent: Ms A Fijiwala, Home Office Presenting Officer.

**DETERMINATION AND REASONS**

**Introduction**

1. The appellant is a national of Nigeria who came to the United Kingdom on 24 May 2013 as a student on a Visa valid until 30 April 2015. On 7 May 2015 she made an application for leave to remain on the basis of her family and private life. She had married a Mr Moses Olasimo on 5 March 2015. He is originally from Cote d' Ivory and has a confirmed right of residence under European Treaty provisions.
2. Her application was refused on 6 January 2017. It was considered under the 10 year route. The refusal letter accepted that the appellant's marriage is genuine and subsisting. The respondent had regard to EX 1 and concluded there were no insurmountable obstacles to the appellant and her partner

going to Nigeria. In terms of her private life again the respondent concluded that there would not be very significant obstacles to her integration back into Nigeria. No other exceptional circumstances were identified justifying the grant of leave outside the rules.

3. Her appeal was heard on 11 December 2017 by First-tier Tribunal Judge Griffith. Her husband was not in attendance and the appellant advised the judge that he had been out celebrating the night before and had taken too much alcohol. The appellant explained why she did not want to return to Nigeria. This included a lack of accommodation and employment and concerns about the general security situation. She said that her husband was aware of her immigration status when they married.
4. The judge commented that there was uncertainty as to her husband's immigration status. It appeared he had been granted confirmation of a right of permanent residence under European Treaty provisions. The judge commented the appellant had been in the United Kingdom a relatively short time and for a temporary purpose.
5. The judge did not find it established that there were insurmountable obstacles to return to Nigeria. The judge did find that family life was engaged but concluded the respondent's decision was proportionate.

### The Upper Tribunal

6. Permission to appeal was granted on the basis the judge failed to apply section 117 B of the Nationality Immigration and Asylum Act 2002. The appellant spoke English and was not a charge public funds having been supported by her husband and her relatives. The appellant's husband had a permanent right of residence under European law and it was submitted that the judge erred in suggesting he could travel outside the EU to be with his wife.
7. Mr. Murphy referred me to paragraph 6 and 32 where the judge referred to the couple returning to Nigeria and pointed out that in fact her husband was not Nigerian. The trust of the appeal was that it was accepted the relationship with genuine and subsisting, began when the appellant was here lawfully, and the judge failed to consider the public interest factors set out in section 117 B which the appellant satisfied when considering the proportionality of the decision.
8. Ms Fijiwala's response was that specific consideration of section 117 B would not have made any difference to the outcome. In this regard she relied upon the decision of Rhuppiah -v- SSHD [2016] EWCA Civ 803. I am grateful to her for being able to provide me with a copy of this decision and the other authorities referred to. In that case the appellant sought to remain outside the rules and based on her private life. She relied upon her relationship with an ill

friend whom she assisted; her charitable works and her fluency in English and the fact she was not financial burden on the State.

9. The Court of Appeal considered the effect of being proficient in English or being financially independent as set out in section 117 B(2) and (3) respectively and concluded that these were neutral factors. If a person could not speak English that would have been a negative factor to be considered when considering the public interest question and the person's ability to integrate and so forth. However, it did not follow the because someone was able to speak English that it was in the public interest they should be given leave to enter or remain. The same reasoning applied in respect of financial independence. Furthermore, the notion of financial independence meant financially independent of others (para 63) and the appellant here was not. Consequently, Ms Fijiwola submitted there was no material error in the judge not referring to section 117 B because this would not have affected the outcome.
10. Ms Fijiwola also provided me with the decision of the Upper Tribunal in Rajendran (S117 B -family life)[2016] UKUT 00138 (IAC) which dealt was family life developed whilst the person either was here illegally or whose immigration status was precarious. The Upper Tribunal found that the reference to 'little weight' in the statute was confined to private life established by a person when their immigration status was unlawful or precarious. However, the provisions in section 117 A-D were not exhaustive. Where family life has developed in precarious circumstances then public interest considerations were relevant in line with established jurisprudence. Consequently, she submitted the judge was entitled to place little weight upon the appellant's family life in the circumstances.
11. I was also referred to the decision of Ageyako [2017] UKSC 11 and paragraph 47 to 48 which required the tribunal to consider if the immigration rules were met and then to see if they were unjustifiably harsh consequences. She submitted that the judge adequately did this at paragraph 38 to 39. Whilst the judge had referred to her husband returning to Nigeria there was no evidence led that he could not enter or remain in Nigeria and the burden to show this was upon her.

### Conclusions

12. I have had regard to the points raised by the presenting officer in relation to section 117 B and the case law she has referred me to. It is correct that the judge does not refer to section 117B albeit it was raised at the hearing by the presenting officer in submissions. However, in light of the authorities quoted I do not see how the failure to refer to the section would have made any material difference to the outcome. This is because the ability to speak English and being financially independent are neutral factors. In fact, the appellant was not financially independent but was reliant upon her husband. The point

at issue is net and my conclusion therefore is that no material error of law has been demonstrated and the decision shall stand.

Decision.

No material error of law has been demonstrated in the decision of First-tier Tribunal Judge Griffith. Consequently, that decision dismissing the appellant's appeal shall stand.

*Francis J Farrelly...*

Deputy Upper Tribunal Judge

Date: 20<sup>th</sup> August 2018