



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: HU/05900/2016**

**HU/03130/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On January 19, 2018**

**Decision & Reasons  
Promulgated**

**On January 23, 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR LAWRENCE EMELIKE UKANDA  
MRS OMOLIZE LAWRENCE UKANDU  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Unigwe, Counsel, instructed by Melvyn Everson and Co

For the Respondent: Mr Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I do not make an anonymity direction.
2. The appellants are Nigerian nationals. The second-named appellant entered the United Kingdom as student on October 1, 2006 with valid leave until November 30, 2009. Two applications to extend her leave as

Tier 4 (General) student were refused but on April 12, 2010 further leave was granted which ultimately extended her stay in this category until November 12, 2012. She then applied on March 21, 2012 for leave to remain as a Tier 1 Post Study Migrant and this was granted until June 1, 2014. The first-named appellant entered the United Kingdom as his wife's dependant in March 2013. Two children have since been born.

3. Subsequent applications to remain as Tier 1 Entrepreneurs and dependant were rejected on June 27, 2014 and August 5, 2014. Appeals and administrative reviews were refused.
4. On September 16, 2015 the appellants applied for settlement based on long residence. The respondent refused their applications on January 15, 2016.
5. The appellants lodged grounds of appeal on February 1, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. Their appeals came before Judge of the First-tier Tribunal Wilson (hereinafter called "the Judge") on July 17, 2017 and in a decision promulgated on August 2, 2017 the Judge refused their appeals both under the Immigration Rules and on human rights grounds.
6. The appellants appealed the decision on August 16, 2017. Permission to appeal was granted by Judge of the First-tier Tribunal Hollingsworth on November 27, 2017. In giving permission Judge of the First-tier Tribunal Hollingsworth found the Judge may have erred by not attaching weight to the extensive lawful period of 9 year 8 months the appellants were in this country when considering proportionality.
7. The matter came before me on the above date and the parties were represented as set out above.

### **SUBMISSIONS**

8. Mr Unigwe adopted the grounds of appeal and submitted the Judge had erred by failing to consider article 8 extensively and in particular by failing to attach weight to the period of lawful residence in this country and the role they played in the siblings' lives. Having accepted the appellants would face significant difficulties and some economic disadvantages the Judge should have allowed the appeals.
9. Mr Nath adopted the Rule 24 statement dated December 20, 2017. The Judge was fully aware the appellant fell just short of the ten years required and noted the difficulties they would face but ultimately concluded they were not enough. A "near miss" was insufficient and on its own would not amount to compelling circumstances to allow the appeal outside the Rules. The Rules are an expression of the respondent's position on such applications. In this case the Judge had regard to all the factors and whilst a different judge may have reached a different conclusion this decision was open to the Judge.

## **FINDINGS ON THE ERROR IN LAW**

10. At the original hearing the second-named appellant accepted that her total lawful residence totalled just under ten years and consequently she could not meet the long residence provisions. Whilst being here lawfully she had obtained a Bachelor of Arts and Master of Science in business economics. She contributed to life in the United Kingdom through her community work, her work with the church and by being economically self-sufficient. The Judge found her to be a credible and honest witness.
11. At [6] of his decision the Judge noted the second-named appellant's parents and brother were alive and living in Nigeria. The Judge also accepted that she had two UK siblings one of whom provided her and her family with accommodation and some financial support and the other owned a small shop which provided additional income. The Judge accepted life would be more difficult in Nigeria. At [7] the Judge considered the best interests of the children and concluded their best interests were with their parents and that was the most important relationship regardless of the fact they had uncles and cousins in this country. The Judge assessed the claim under paragraph 276ADE(vi) HC 395 and found there would be no significant obstacles. This finding was not challenged in the grounds of appeal.
12. At [9] the Judge set out the arguments advanced by their Counsel and then between [11] and [13] the Judge considered the appeal under article 8 ECHR. The Judge noted the second-named appellant had built up a considerable private life amounting to 9 years 8 months lawfully. The Judge reminded himself that refusing the appeals would cause significant difficulties for a family relocating to Nigeria and that such a move would present some economic disadvantages for them. The Judge also mentioned "near miss" in the environment of article 8 ECHR.
13. In SS (Congo) and Others 2015 EWCA Civ 387 it was held that the fact that a case was a 'near miss' in relation to satisfying the requirements of the rules would not show that compelling reasons existed requiring the grant of the leave to remain outside the Rules. If a claimant could show however that there were individual interests at stake covered by Article 8, which gave rise to a claim that compelling circumstances existed to justify the grant of leave outside the rules, the fact that the case was a 'near-miss' might be a relevant consideration, which tipped the balance in his or her favour."
14. At [13] and [14] the Judge identified circumstances relevant to the appellants but was not satisfied they were sufficient to depart from the Rules. Mr Unigwe raised the relationship between the appellants' family and the second-named appellant's brothers but this was addressed by the Judge in [13] of his decision.

15. The main thrust of appeal was that the Judge had failed to consider the lawful residence, the relationships they had in this country and the fact they would face significant difficulties and some economic disadvantage.
16. Having listened to the submissions I am not persuaded the Judge erred. The Judge was fully aware of the law and the correct approach to take in such cases. Taking the decision as a whole I am satisfied the Judge did have regard to the lengthy period of lawful residence and it would be wrong to suggest no regard was given to this. A reading of [11] to [13] demonstrates engagement with these issues. The Judge also took into account the difficulties they may face and the loss of direct contact with UK family but concluded removal was not disproportionate.
17. As Mr Nath conceded a different Judge may have reached a different conclusion but I am satisfied there is nothing in this decision which amounts to an error in law.

**DECISION**

18. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the original decision and I dismiss this appeal.

Signed

Date 19/01/2018



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**  
**FEE AWARD**

No award is made as I have dismissed the appeal.

Signed

Date 19/01/2018



Deputy Upper Tribunal Judge Alis

