



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/10496/2016

THE IMMIGRATION ACTS

Heard at Field House
On 30th August 2018

Decision & Reasons Promulgated
On 12th October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MISS OLATOKUNBO [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms O Taiglo (Legal Representative)

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant born on 19th December 1986 is a citizen of Nigeria. The Appellant, who was not present was represented by Ms Taiglo. The Respondent was represented by Mr Walker a Presenting Officer.

Substantive Issues Under Appeal

2. The Appellant had applied for leave to remain in the United Kingdom on 30th September 2015. That application had been refused by the Respondent on 13th February 2016 and the Appellant thereafter had appealed that decision. Her appeal was heard by First-tier Tribunal Judge Shaw sitting at Taylor House on 13th July 2017. The Judge allowed the Appellant's appeal under Article 8 outside of the Rules having dismissed the Appellant's appeal under the Immigration Rules.
3. The Respondent made application for permission to appeal to the Upper Tribunal by application dated 12th September 2017. Permission to appeal was granted by First-tier Tribunal Judge Doyle on 22nd February 2018. It was found that it was arguable that the judge had conflated private life and family life and had not set out adequate reasons for his conclusions and found that the Grounds of Appeal generally were arguable.
4. The matter came before me on 19th April 2018 at Field House to decide firstly whether or not an error of law had been made by the First-tier Tribunal Judge. For reasons provided in the decision promulgated on 10th May 2018 I found that a material error of law had been made by the judge in this case and set aside the decision of the First-tier Tribunal. Directions were issued for the matter to be reheard in the Upper Tribunal. In accordance with those directions the matter came before me on 30th August 2018.

The Proceedings - Introduction

5. I firstly noted the documentary evidence before me in this case. Essentially there was no fresh documentation since the hearing before the First-tier Tribunal. The Respondent's bundle consisted of:
 - Immigration history.
 - Those documents listed at folios A to E.
 - Refusal letter.
6. The Appellant's documents consist of:
 - Those documents listed at folios 1 to 84 on the index sheet to the bundle.

The Proceedings - Evidence

7. I heard from the witness Ms [A]. She identified herself and her address and date of birth. She confirmed that she was Nigerian and had limited leave to remain in the UK. She adopted her witness statement of 26th June 2017 as being true and correct. She further stated that the Appellant was struggling in Nigeria. She tried to support her but she had two children in the UK. Her mother had arthritis. She had three siblings, one in the USA, one in Canada and one in Nigeria and she provided some help to those individuals.

8. In cross-examination she said that the Appellant had no other means of support other than herself. She said that the Appellant rented a room that she paid for and the Appellant had no other relatives in Nigeria.
9. In answer to questions that I raised the witness confirmed that she had been in the UK for some fourteen years and was a customer service manager earning £1,465 monthly after tax. She had two children age 7 and 6. Her mother had no benefits. Her siblings abroad were students. She said that she had grown up with the Appellant and they had lived together in the UK. The rent on the property in Nigeria was £30 per annum. Further, she sent her cousin some £40 to £50 monthly. She was not working. She lived in a suburb of Lagos.
10. In closing submissions, the Respondent referred to the test under the Immigration Rules namely as to whether there were or were not insurmountable obstacles for the Appellant reintegrating back to Nigeria.
11. Finally, on behalf of the Appellant it was said that she had no network of support in Nigeria and was financially dependent upon her cousin in the UK where also she had social ties. It was said that she could work in the UK and had no criminal convictions.
12. At the conclusion I reserved my decision to consider the documents and evidence submitted. I now provide that decision with my reasons.

Decision and Reasons

13. In this case the burden of proof lies on the Appellant and the standard of proof required for both immigration and human rights issues is a balance of probabilities.
14. The facts in this case are largely not in dispute.
15. The Appellant was born in the UK in London in December 1986. After her birth her parents took her to Nigeria but at some stage it is said her parents passed away. The Appellant was then brought back to the UK by a relative in June 2003 when the Appellant was 16 years of age. The witness statements of the Appellant, her sister, and her cousin all refer to this fact in similar, if not identical terms. However, none identify this relative either by name or relationship or the means or motives behind that move in 2003. There is in my view rather more to this aspect of the case than anyone has been prepared to admit and does leave something of a question mark over the circumstances in Nigeria in 2003 so far as they relate to the Appellant and possibly the question of whether or not there are relatives in Nigeria.
16. However, whatever may be the reality of that which occurred in 2003 the Appellant was at that stage only 16 years of age. It has been said by the Appellant that she believed herself to be a British citizen because she had been born in the UK and had returned in 2003 and it would appear had had no difficulties in remaining in the UK and obtaining documentation that allowed her to study and obtain a variety of

different jobs. I accept in the circumstances the Appellant's claimed belief may well be genuine.

17. The reality of her position only came to light in 2015 when she applied for a British passport and discovered that she was not a British citizen and therefore not entitled to a passport. The Appellant was removed to Nigeria in April 2016 by the Home Office and this appeal has been brought out of country by or on the Appellant's behalf.
18. The Appellant and her witnesses and other documentary evidence provided has given something of a picture of the Appellant's life in the UK from 2003 until 2016. I find no reason not to accept that evidence provided and there is nothing unusual or inconsistent in that evidence.
19. Looking firstly at the Appellant's position under the Immigration Rules the relevant part is paragraph 276ADE(1)(vi), as to whether at the date of application it could be said that a removal to her home country of Nigeria would present very significant obstacles to integration into that country.
20. The test "very significant obstacles" presents a reasonably high threshold beyond mere difficulties or being a less attractive option than remaining in the UK. In many ways the strongest point in the Appellant's favour is that she had been living in the UK from the age of 16 and therefore as an adult had not experienced living elsewhere other than the UK. However, I do not find she meets the threshold required under the Rules. I do not find the evidence, or rather the sparsity of evidence on this point suggests the Appellant has no contact or family in Nigeria nor that there has been no link between the Appellant and her relatives in the UK and potentially others in Nigeria over the years. I find the Appellant is young and of good health and clearly has the education and employment skills that would place her as being employable subject to her childcare commitments. There is no language or cultural barrier that she would encounter and she has the ability to maintain contact with relatives and friends in the UK via social media and other forms of communication. I do not find therefore that the Appellant comes within the terms of the Rules.
21. Looking at matters outside of the Rules under Article 8 of the ECHR there needs to be compelling circumstances to demonstrate her removal would be disproportionate. The concept of compelling circumstances has in case law been interpreted as being "unjustifiably harsh circumstances".
22. The evidence that had presented is very sparse. The Appellant returned to Nigeria in April 2016. She now has a young child born in Nigeria. The identity of the father is unknown but he plays no part so far as the evidence suggests in assisting in looking after the child. The witness statements of the Appellant, her sister and cousin are all dated June 2017, over a year after the Appellant had returned to Nigeria. Regrettably none of the statements provided any information as to the Appellant's circumstances in Nigeria at that date. Although this hearing in August 2018 is two and a half years after the Appellant returned to Nigeria again there is no up-to-date evidence in the

form of additional statements or other documentary evidence to assist in understanding the Appellant's life and circumstances during that two and a half year period. A little extra information was provided by the cousin through questions at the hearing, together with some photographs produced. It transpired that the cousin paid for the Appellant's rent which was a modest £30 per annum and provided money each month again of a reasonably modest level of about £40 or £50 but seemingly sufficient to support the Appellant who it was said did not work. Given the age of her young child her lack of employment is understandable but one would presume and perhaps expect that shortly, as her child got older, she would look for employment. No evidence was provided as to any friends, relatives or social contacts the Appellant may have developed over those two and a half years in Nigeria. It would be difficult given normal circumstances in her lifestyle in the UK to assume she had no friends or social contacts in Nigeria and I do not infer that to be likely. The continuance of modest financial support from her relative or relatives in the UK for two and a half years does not lead to an inference that such would be withdrawn prior to the Appellant finding her own employment. It is my view difficult to conclude from the little evidence provided and the above situation and inferences that the Appellant is living in unjustifiably harsh circumstances.

23. Whilst I have much admiration for the Appellant's cousin and the assistance she has provided to the Appellant and her own admirable character I do not find that an application of the final stage test of Razgar that the removal of the Appellant to Nigeria from the UK is or was disproportionate. Whilst I am obliged to consider Section 117B in such cases I do not find anything of particular adversity to the Appellant's situation that can be fairly drawn from Section 117B. Whilst she clearly has had only precarious or indeed perhaps unlawful status in the UK from 2003 I accept that given her age on return to the UK in that year together with her birth in the UK and her lack of difficulty in studying or obtaining employment that she may genuinely have believed she was a British citizen. That does not necessarily negate findings under Section 117B(4) or (5) but it would in my view be somewhat unjust to place much weight on such matters. To that extent, in my view a fair application of Section 117B is to take a view that it presents as essentially a neutral position in this case.

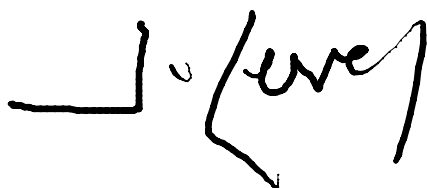
Notice of Decision

24. I dismiss this appeal under the Immigration Rules.

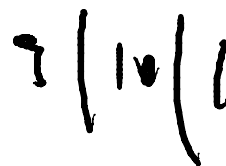
I dismiss this appeal under the Human Rights Act.

No anonymity direction is made.

Signed



Date



Deputy Upper Tribunal Judge Lever

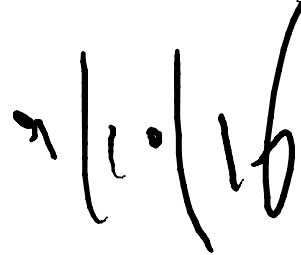
TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed



Date



Deputy Upper Tribunal Judge Lever