



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/18956/2016

THE IMMIGRATION ACTS

Heard at Field House
On 6th July 2018

Decision & Reasons Promulgated
On 28th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MRS. ADEYEBI VICTORIA ALABI
(NO ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms J Victor-Maze, Counsel, instructed by Freemans Solicitors.
For the respondent: Ms A Fijiwala, Home Office Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. The appellant is a national of Nigeria, born on 2 March 1930.
2. She was issued with a visit Visa, valid from 15 March 2006 until 15 September 2006. In the application it was stated she was visiting a nephew and that her husband and adult children were remaining in Nigeria. She then overstayed.
3. She made a number of applications to remain on the basis of article 8 rights, the first of which was in August 2010. Her appeal against a refusal decision dated 21 July 2016 was heard by First-tier Tribunal Judge I Ross at Taylor house on 22 December 2017. The appellant's daughter, Ms Adeyimi Olorunfemi, hereinafter referred to as her sponsor, gave evidence and said the details in the visit Visa application were false, not only regarding its purpose but also in relation to her mother's circumstances in Nigeria. The sponsor said that the appellant did not have a husband or children in Nigeria as stated in

the application and if returned to Nigeria would be destitute. The appellant's granddaughter also gave evidence and said that it was her father who had completed the false Visa application and had made up a story and at the time the sponsor did not have any leave to enter or remain in the United Kingdom so could not sponsor her mother.

4. The presenting officer contended that there was no evidence of the relationship between the appellant and her sponsor going beyond the normal emotional ties. The medical evidence was limited, and no exceptional circumstances were identified. The appellant's representative submitted that her circumstances were exceptional: by that stage she had been in the United Kingdom 11 years and would be destitute if returned to Nigeria.
5. Bearing in mind the details in the visit Visa application of 2 other children in Nigeria the judge rejected the claim of destitution. A GP's letter had been submitted stating the appellant was being looked after by her daughter and that she could not manage without her.
6. The judge found she did not meet the requirements in appendix FM as an adult dependent relative. No evidence had been led that she required long-term personal care to perform everyday tasks and such care was not available in Nigeria. The judge pointed out that she had spent most of her life in Nigeria and she could not meet the requirements of paragraph 276 ADE(vi).
7. The judge concluded that article 8 was not engaged. The judge accepted her daughter provided financial and emotional support but found no evidence that the relationships went beyond the norm between mother and daughter and grandchild. No other exceptional circumstances were identified. The appellant had age-related difficulties but there was no credible evidence she could not be looked after in Nigeria. If this were not available, then she could apply for entry clearance as an adult dependent relative with the necessary proofs.
8. The judge also referred to the public interest considerations in section 117 B and the stipulation that little weight should be given to a private life established was present here unlawfully. The judge concluded that notwithstanding her age and the fact she lived with her daughter immigration control outweighed her interests.

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9. Permission to appeal was granted on the basis it was arguable the judge erred in law in concluding article 8 was not engaged. It was arguable that the judge should have considered the support provided and progressed to consider the proportionality exercise. It is also arguable that there were compelling circumstances given her age.
10. Ms Victor-Maze opened the appeal by pointing out that whilst the application was not an entry clearance application under the adult dependent relative

provisions the judge had sufficient evidence to consider if the rules were met. It was contended the rules were met and therefore this affected the article 8 outcome. She submitted that the judge unduly focuses upon the circumstances of her entry and the visit Visa application which contained false information. She said an explanation for this had been given: namely, that the sponsor's husband and an agent completed the application. She submitted that the judge placed undue weight upon this in considering the merits of the appeal.

11. Furthermore, whatever could be said about the means of entry she had now been in this country 10 years and had established roots. She submitted that the appellant had no other family to return to in Nigeria and took issue with the finding at paragraph 14 that there were no significant obstacles to the appellant's integration back into Nigeria. She submitted that she was unwell and had no house to go to. She contended that the proportionality assessment under article 8 should have been conducted.
12. I was referred to an emotional dependency the appellant had upon her family members in the United Kingdom. It was argued in line with the decision of Beoku Betts [2008] UKHL 39 that regard should have been had to the impact of the decision upon all the other family members affected, including the grandchildren, at least one of whom was a minor.
13. Regarding the public interest factors reference was made at paragraph 18 of the decision. It was pointed out that the appellant had not been reliant upon State aid and had no criminal convictions.
14. In response, Ms Fijiwala submitted that the judge did consider the adult dependent rules and made a clear finding that the appellant could not succeed, as set out in paragraph 13. The judge considered the medical evidence in the GP letter and stated there was no evidence she required long-term personal care and that this was unavailable in Nigeria.
15. Ms Fijiwala submitted that the proportionality argument did not arise unless there was a finding that article 8 was engaged, which the judge rejected. The relevant findings were set out at paragraphs 15 to 16 where the judge found that the family relationships did not go beyond the norm. The judge cited Kugathas -v- SSHD [2003] EWCA Civ 31 and S-v- United Kingdom [1984] 40 DR 196. I was also referred by the presenting officer to the decision of Britcits -v-SSHID [2017] EWCA Civ 368 and the age and vulnerability were relevant factors which the judge here had considered. The judge had referred to her age and the medical evidence but rejected the claim that the appellant would be destitute. I was also referred to paragraph 68 onwards in the decision of Ribeli -v- ECO [2018] EWCA Civ 611 which referred to the relevant test. This went further by suggesting the appellant's daughter in that case could have relocated back to her native South Africa to be with her mother.

16. The judge also considered sect 117B: this would only come into play if there were a finding in relation to article 8 applying. Ms Fijiwola submitted that the judge was entitled to attach little weight to the appellant's private life given the circumstances of her entry. Furthermore, the appellant was not financially independent but was reliant upon others.
17. Regarding paragraph 276 ADE at paragraph 14 the judge did not find significant obstacles to her reintegration back into life into Nigeria. This was a finding open to the judge and it was pointed out the appellant had lived in Nigeria until the age of 77. The judge had also found the appellant and her sponsor not to be credible given the visit Visa application and the finding that she has 2 other children in Nigeria and would not be destitute. The judge had found that false information had been given in the Visa application and that otherwise she most likely would not have been granted entry clearance. Whilst the appellant's sponsor claimed to be unaware of this the judge rejected the claim.

Consideration

18. It would be natural to be sympathetic to the appellant given her advanced years and her wish to be remain with her sponsor in the United Kingdom who has been providing care and support. The medical evidence in fact would suggest the appellant enjoys good health for her years, save for the deterioration which can be expected with the passage of time.
19. Ms Victor-Maze has suggested the judge was unduly influenced by the circumstances of the appellant's entry into the United Kingdom. In fact she goes so far as to say the judge was biased. I would reject this contention. The case being put forward is that the appellant was innocent of any wrongdoing, as was her sponsor. The argument has been that responsibility for the deception lies with the agent and the sponsor's husband. The judge clearly rejected this and made the observation that but for the deception she may well not have been granted entry clearance. The appellant's age would have been apparent to the entry clearance officer as would the risk that she may overstay and benefit from the health service given a natural decline. Consequently, strong ties with Nigeria were portrayed including a husband and adult children. The application indicated she was coming to visit a nephew.
20. It is argued on behalf of the appellant that the details in the visit Visa application were false. It was submitted that in fact her husband and only son were killed in a car crash and her sponsor is her only living immediate family member. Consequently, it was suggested she would be unsupported and face destitution in Nigeria.
21. The content of the visit Visa was highly relevant to the consideration of the appellant's circumstances in Nigeria. The judge rejected her claim that she had no family members in Nigeria and found that her sponsor was complicit in the deception. Given that it is now acknowledged that falsehoods were

stated it is very difficult to know the appellant's true situation. Suffice it to say that the judge rejected the claim she would have no family members there. This was a factual finding open to the judge relevant to the appeal.

22. The decision is concise and addresses the relevant considerations and makes appropriate findings. The judge did consider the relevant immigration rules, namely, the provisions in respect of adult dependent relatives and article 8 private life based upon long residence.
23. There is a high threshold to meet in respect of the adult dependent relative provisions. The judge found she could not have met these and at paragraph 13 refers to the absence of evidence that she requires long-term personal care and that this is not available in Nigeria. It was for the appellant and her representatives to establish this case which they clearly failed to do.
24. In terms of her private life and paragraph 276 ADE, it was necessary to determine her connections with Nigeria. The judge pointed out that she had lived there until the age of 77. The judge had rejected the claim that she would be destitute. These were findings open to the judge.
25. In summary the judge was entitled to find the appellant had not demonstrated she met the requirements in the rules in relation to the adult dependent relative provisions and private life in paragraph 276 ADE.
26. It was argued on behalf of the appellant that there was no consideration of the proportionality of the decision. However, this presupposes that article 8 is engaged. The judge had regard to the relevant case law and had concluded in the absence of evidence of dependency going beyond the normal emotional ties it was not engaged. This was a factual finding open to the judge.
27. For completeness, the judge went on to consider the public interest considerations in section 117B of the Nationality, Immigration and Asylum Act 2002. The observations there were open to the judge on the evidence.
28. In conclusion, I find no material error established in the decision of First-tier Tribunal Judge I Ross. Consequently, that decision, dismissing the appellant's appeal shall stand.

Decision

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

Francis J Farrelly.

Deputy Upper Tribunal Judge

Date: 20 August 2018