



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/24662/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
Promulgated  
On 24<sup>th</sup> September 2018  
2018**

**Decision & Reasons**

**On 1<sup>st</sup> November**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**MISS IRENE EHIREME OMOIKE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Ronald Fletcher and Co (No appearance)

For the respondent: Ms J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is a national of Nigeria, born on 7 April 1980. She came to the United Kingdom on 20<sup>th</sup> January 2008 with leave as a student until 28 February 2011. On the 4<sup>th</sup> February 2011 she applied for further leave which was granted until 30 April 2014. On the 28<sup>th</sup> April 2014 a further application was made resulting in leave until 5 September 2015. That leave was curtailed on 12 December 2014 so as to expire on 15 February 2015. That meant she had continuous leaves covering the entry on 20 January 2008 to 15<sup>th</sup> February 2015.

2. On 12 February 2015 she applied for leave to remain on the basis of her article 8 rights. This was refused on 25 March 2015.
3. On 7 April 2015 she appealed that decision. Her appeal was withdrawn on 24 May 2016. On 9 June 2016 she applied for leave to remain again on the basis of her article 8 rights. This was refused on 14 October 2016.
4. Her appeal against that decision was heard by Judge of the First-tier Tribunal NMK Lawrence at Hatton Cross on 25 May 2018. In a decision promulgated on 22 June 2000 the appeal is dismissed. Permission to appeal that decision was granted on the basis inter alia it was arguable the judge should have adjourned the hearing because the appellant had indicated she was unwell. It was also arguable that the judge may not have applied section 3C of the Immigration Act 1971 correctly.

### Consideration.

5. The decision of First-tier Tribunal Judge NMK Lawrence indicates that the appellant was represented by Counsel and there was no Home Office presenting officer. The appellant gave evidence as did a witness on her behalf. Counsel then began to make submissions. The appellant then indicated to her Counsel that she needed to take medication. The judge was made aware of this and told Counsel she could take her medication whilst he continued with his submissions. The appellant then stood up and her friends gathered around her and said that she was taking a seizure. The judge then rose and an ambulance was called. The Judge then returned and Counsel said the appellant had been taken to hospital. Counsel then sought an adjournment and the judge indicated this was unnecessary as all the evidence had been heard. Counsel then suggested that the appellant might have wanted to make contributions to his submissions. The judge then directed Counsel to put his submissions in writing which could include any comments from the appellant within 5 days.

### The Upper Tribunal

6. I have received an e mail from the appellant's representatives indicating that the appellant will not be attending nor will they. They include a skeleton argument for consideration. The skeleton argument on behalf of the appellant notes that when she made her application for leave to remain on 9 June 2016, having arrived on 20<sup>th</sup> January 2008, she had not been in the United Kingdom 10 years. This also was the case when the decision was made on the 14 October 2016. However, by the time of the appeal, being the 25 May 2018, she had been here over 10 years. The skeleton argument claims the appellant has been continuously lawfully present in excess of 10 years by the time of hearing. This was because of section 3C leave.
7. Ms J Isherwood contends that the appellant did not have section 3C leave throughout. Going through the chronology she accepts that the appellant had leave up until 24 May 2016 when her original appeal was withdrawn.

I have seen a letter from the tribunal dated 24 May 2016 giving the appellant notice by way of confirmation that she has withdrawn her appeal. Ms J Isherwood states that this breaks the continuity. The fact that she then put in a new application prevents her removal only and does not maintain continuity. In this respect the decision of First-tier Tribunal Judge Lawrence is wrong in stating at paragraph 23 that her section 3C leave continued. I have had regard to the wording of section 3C and am in agreement with Ms Isherwood's submission.

8. I also see no material error of law in the judge not adjourning at the submission stage. At that stage the evidence had concluded. The appellant's representative contended that the appellant might wish to contribute to the submissions. The judge took the pragmatic measure of allowing the representative 5 days in which to lodge written submissions.
9. The appeal was restricted to human rights considerations. There was no claim based upon any family life. In terms of the appellant's private life the proportionality of the decision was to be considered through the prism of the rules. The appellant in fact did not meet the rules in relation to 10 years lawful residence. She had not been here 10 years at the time of application. In any event, as indicated the position by the time of hearing was that her leave had been broken by the withdrawal of the earlier appeal. The judge dealt adequately with her medical condition pointing out that treatment was available in Nigeria. There was no other basis for allowing the appeal. The judge had regard to section 117 B public interest considerations, noting the appellant had not been economically independent and a private life was established whilst the immigration status was precarious. The appellant did not meet
10. I see nothing else in the grounds raised which would demonstrate a material error of law. Some of the grounds, such as the reference to the judge's comments about the presence of the ambulance as he was leaving, relate to peripheral matters.

### Decision

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

*Francis J Farrelly*  
Deputy Upper Tribunal Judge

23<sup>rd</sup> October 2018