



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/04893/2019

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated**

On: 10 October 2019

On: 17 October 2019

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**ELEANOR OMOZOGIE ATAKPU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Ferguson, instructed through Direct Access

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

DECISION AND REASONS

1. This appeal comes before me following the grant of permission to appeal to the Upper Tribunal.

2. The appellant is a national of Nigeria, born on 25 June 1996. She entered the UK on 29 December 2012 on a child student visa valid until 15 November 2014. She was granted further periods of leave as a student until 30 August 2018. On 29 August 2018 she applied for leave to remain on family and private

life grounds, on the basis of her family life with her husband [CM], a British citizen whom she married on 25 August 2018.

3. The appellant's application was considered under the 10-year partner route and was refused on 26 February 2019 on the basis that the requirements of Appendix FM and paragraph 276ADE(1) of the immigration rules could not be met and that there were no exceptional circumstances justifying a grant of leave outside the immigration rules. The respondent considered that there were no insurmountable obstacles to family life continuing outside the UK for the purposes of paragraph EX.1.(a) of Appendix FM and no very significant obstacles to the appellant's integration in Nigeria for the purposes of paragraph 276ADE(1).

4. The appellant appealed that decision and her appeal was heard in the First-tier Tribunal on 15 May 2019 by First-tier Tribunal Judge Clarke. The judge noted that the appellant had always had lawful leave in the UK. She noted the appellant's claim that she had fallen out with her parents because her mother was cross that she had not completed her final year of studies. She feared that her mother would be violent towards her. Her husband would not go to live in Nigeria. The judge considered that that did not amount to insurmountable obstacles and concluded that the appellant could return to Nigeria and make an entry clearance application to re-join her husband in the UK. The judge considered that, whilst the appellant's husband did not meet the income threshold required under the immigration rules as he had recently been made redundant, the appellant would be able to work as previously and her husband's mother and aunt would be able to make up the shortfall to meet the financial threshold if an out of country application was made. The judge concluded that the requirements of the immigration rules could not be met and that the facts of the case did not permit her to conclude that it would be unjustifiably harsh to require the appellant to return to Nigeria and make an out of country application. She accordingly dismissed the appeal.

5. The appellant sought permission to appeal that decision on the basis that the judge had failed to consider and apply the principles in Chikwamba v Secretary of State for the Home Department [2008] UKHL 40 and Hayat (nature of Chikwamba principle) Pakistan [2011] UKUT 444 in assessing proportionality and had misapplied section 117B of the Nationality, Immigration and Asylum Act 2002.

6. Permission to appeal was granted in the First-tier Tribunal.

7. At the hearing before me, Ms Ferguson relied on the grounds and submitted that since all the "balance sheet" factors applied in the appellant's favour the judge ought to have found that it was disproportionate to expect the appellant to return to Nigeria to make an entry clearance application.

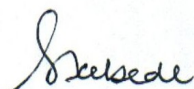
8. Mr Walker submitted that it was unusual for the judge to have found in favour of the appellant to the extent set out at [11] but yet to have concluded that it would not be unduly harsh for her to return to Nigeria to make an entry

clearance application. He agreed that the judge had erred in law in her approach to the balance sheet assessment and that the error was material. He agreed that the decision should be re-made by allowing the appeal.

9. In light of Mr Walker's concession, there is no need for me to say anything more. Mr Walker, on behalf of the respondent, accepts that the balance should fall in favour of the appellant, in light of the judge's findings at [9] and [11], and accordingly I accept that the respondent's decision to refuse the appellant's human rights claim is disproportionate and in breach of Article 8. I therefore find that the judge erred in law in her decision and I set it aside. I allow the appellant's appeal on Article 8 human rights grounds.

DECISION

10. The making of the decision by the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision and re-make it by allowing the appellant's appeal on Article 8 human rights grounds.

Signed: 
Upper Tribunal Judge Kebede
2019

Dated: 11 October