



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02397/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On 19 March 2021**

**Decision & Reasons Promulgated
On 26 March 2021**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**IBINGO PRINCESS BRIGGS
[NO ANONYMITY ORDER]**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Yetunde Alabi, solicitor with Kingscourt Solicitors

For the respondent: Mr Stephen Walker, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision on 23 January 2020 to refuse her leave to remain in the United Kingdom on human rights grounds, either within the Immigration Rules HC 395 (as

amended) by reference to paragraph 276ADE and Appendix FM, or outside the Rules. The appellant is a citizen of Nigeria.

Background

2. The appellant is a 28 year old woman. She was born in Nigeria in 1992 and it seems that in or about 2008, she suffered a stroke while in Nigeria. On 28 June 2010 she came to the United Kingdom with her mother and two siblings, to join her father who was studying here. They all had dependant visas.
3. The appellant's leave to remain was extended, first as a Tier 4 dependant and later as a Tier 2 dependant until 20 November 2014, but on 19 February 2014, her father's visa and those of his dependants were curtailed to expired on 20 April 2014.
4. The appellant has not had valid leave to remain since then.
5. On 20 November 2014, she made a further application as an adult Tier 2 dependant, which was refused with an in-country right of appeal. She was appeal rights exhausted on that application on 23 February 2017. She was 24 years old.
6. The present application was made on 8 February 2019, on the basis that her mother and her younger brother, who was still in full time education, both had leave to remain as her father's dependants. The appellant said that she was living with them. The appellant said she had lived in the United Kingdom for almost 9 years, that she still suffered from the consequences of her earlier stroke, and that she was unable to travel for medical reasons.
7. When refusing her further leave to remain on 23 January 2020, the respondent said that the appellant could not meet the Rules, that there were no very significant obstacles to her return to Nigeria, and that there were no exceptional circumstances for which leave to remain ought to be granted outside the Rules. Nigeria had a functioning healthcare system, and she had no terminal illness.
8. Applying *N v Secretary of State for the Home Department (Terrence Higgins Trust intervening)* [2005] UKHL 31, the respondent concluded that the appellant could not succeed. The respondent did not have the benefit of the decision of the Supreme Court in *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17, which was handed down three months later, on 29 April 2020.

First-tier Tribunal decision

9. The First-tier Tribunal applied the Supreme Court decision in *AM (Zimbabwe)* and took account of the appellant's medical conditions, which are set out at [28]. The only medical evidence was part of a letter dated 16 July 2019 from Croydon University Hospital to the appellant's general medical practitioner, Dr Georgine Whyte of Thornton Road Surgery, but only the first page of that letter was provided. The name of the author was not provided.
10. At [40], the judge noted that the appellant's father no longer had any existing leave to remain in the United Kingdom and could accompany her back to Nigeria and help her there. At [48], the judge noted that there was no witness statement from the appellant's mother or other family members, although there were unsigned, undated proofs of evidence, and that no family member had attended to be cross-examined.
11. The appellant's health was properly considered at [26]-[28]: she had been diagnosed with 'benign hypermobility syndrome; previous haemorrhagic infarct; headache; seizures; dizziness; asthma; previously low vitamin D; family history of sickle cell disease; and hypertension'. The appellant was taking cinnarizine (an antihistamine which makes you drowsy), topiramate (an epilepsy and migraine treatment), asthma inhalers, amitriptyline (also a migraine and pain remedy, which she takes at night), vitamin D and glucosamine (which helps protect joints). The appellant had been receiving treatment from the NHS without paying the contribution required from non-nationals.
12. None of the more recent letters provided by the appellant indicated that there had been further significant deterioration in her health, nor were the conditions relied upon said to be life-threatening. At [28], the judge recorded that the only evidence that the appellant was unfit to fly was Ms Alabi's assertion to that effect. Dr Ho-man Kwong at Thornton Road Surgery in a letter dated 11 September 2019 expressly said that he could not comment on whether the appellant was fit to fly.
13. The First-tier Judge found that the appellant had given evasive evidence about whether she still had family in Nigeria. The judge considered it likely that she had: at [37]-[38] the judge expressed surprise at the vagueness of the appellant's recollection of her family ties there:

"38. ... On consideration, given that the appellant was aged 17 when she came to the United Kingdom, I find it surprising to say the least that she has such a hazy recollection of her wider family in Nigeria, including whether her parents have any siblings, and whether she had even met any of them. Taken in the round with the fact that her parents and siblings were not present at the hearing to be cross-examined on their evidence, I find this damaging to the appellant's credibility, and I am unpersuaded that the appellant has no family ties in Nigeria as claimed, or that, if she did, they would be unable to look after her. On balance, I find that it is likely that she has family members in Nigeria who could assist her on return."

14. At [44], the judge observed that the appellant's father was in the United Kingdom unlawfully and her mother and siblings only had limited leave to remain. The judge accepted that the appellant 'could not be expected to return to Nigeria alone, given her many health problems'. Her other family members were not settled in the United Kingdom and if she really needed their support, it remained open to the appellant's mother, brother or father to return to Nigeria with her. The family's enhanced role in caring for the appellant was not accepted, on the evidence before the judge.
15. The First-tier Judge found that the appellant had not discharged the burden of demonstrating that she would be unable to access appropriate healthcare in Nigeria and that there were no very significant obstacles to her re-establishing her private life in Nigeria.
16. In balancing all the relevant factors under Article 8 outside the Rules at [52], the judge said this:

"52. ...I accept that the appellant has established a private life in the United Kingdom with her family, friends and through her past studies and Church membership over the past 10 years. I also accept that she came to the United Kingdom with her family, not out of her own choice. The appellant's poor health is of course central to her claim. It is clear ...that over the past 10 or so years, the appellant has unfortunately been subjected to a number of health complaints, many of them serious in nature, which have no doubt derailed her life in many ways. One can only have the greatest sympathy for what she has gone through, and continues to go through, at such a young age. It has required her to seek treatment on the NHS, which understandably she does not want to disrupt by returning to Nigeria. "
17. Only 'little weight' could be given to the appellant's private life in the United Kingdom and her removal would be proportionate.
18. For the appellant, Ms Alabi raised Article 3 ECHR at the hearing, with relation to the appellant's medical conditions, having not previously indicated that she would rely on it. The Tribunal permitted Ms Alabi to argue Article 3, although she acknowledged that this was not the appellant's strongest claim. There was no medical evidence to support the appellant's claim that the flight could be fatal to her. No efforts had been undertaken to establish what treatment would be available in Nigeria and there was no medico-legal report or country expert evidence to assist the First-tier Judge. The First-tier Judge applied *AM (Zimbabwe)* but found that the standard therein was not met.
19. The appeal was dismissed on all grounds. The appellant appealed to the Upper Tribunal.

Grounds of appeal

20. The appellant's challenge was to the First-tier Judge's findings of fact and credibility, in particular the judge's findings on the lack of *Kugathas* family life are challenged. Ms Alabi, who settled the grounds of appeal, asserted that to remove the appellant would destabilise the whole family situation.
21. The appellant's father had completed his PhD and had worked as a lecturer but no longer had status in the United Kingdom and was currently unable to work in academic life as he had. He had now passed the retirement age of 60 which applied in Nigeria and would not be able to seek employment if he returned there.
22. The rest of her family still had leave to remain and were on the route to settlement. They were working and studying, enabling them to support the appellant financially, physically and emotionally. Ms Alabi argued that as the judge had accepted at [44] that the appellant could not be expected to return alone to Nigeria, given her many health problems, it would be unduly harsh to expect her family members, who had jobs and lives enabling them to care for her, to uproot themselves in the pandemic and in uncertain times. Removing the appellant to Nigeria would result in irreversible decline in her health and wellbeing.

Permission to appeal

23. Permission to appeal was granted by Designated Judge McClure who set out the various factual challenges in the grounds of appeal. His decision continued:

“2. The issue with regard to the cerebral haemorrhage being made by the judge was that it had occurred at least 10 years prior to the date of the doctor's letter, if not more. Subsequent to that, the appellant had applied to study at University in the United Kingdom and been granted leave on that basis. Whilst by reason of a further medical problem, she was unable to complete a University course, nevertheless, she had recovered enough from the haemorrhage and had the advantage of the [United Kingdom] education opportunities provided.

3. A valid point is made by the judge [that] if the family are so concerned as to the welfare of the appellant they can, if necessary, care for her in Nigeria. There is no abs ”

24. Permission to appeal was granted on all grounds.

Rule 24 Reply

25. The respondent did not prepare a Rule 24 Reply to the grant of permission to appeal.
26. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

27. For the respondent, Mr Walker said that the appellant had been stymied by the lack of any concrete family evidence to support her contention that it would be disproportionate to return her to Nigeria and that she depended on her family members at the *Kugathas* level, such that there was still family life between her and them. Her family members were present during the First-tier Tribunal hearing and could have given evidence, but chose not to do so. There were also some pages missing from the Croydon University Hospital report. Mr Walker argued that there was no material error of law in the First-tier Tribunal decision and asked me to uphold it.
28. For the appellant, Ms Alabi relied on the grounds of appeal and argued that there was sufficient evidence to show that the appellant's medical conditions were deteriorating. She accepted that the appellant had provided no evidence of conditions in hospitals in Nigeria, and that no signed witness statements or oral evidence other than that of the appellant had been provided.
29. Ms Alabi continued to assert that the appellant's health was deteriorating and her family her main support. Her mother and sister had attended the hearing (which was remote) and gave the appellant her medications during the hearing. Ms Alabi accepted that the appellant could have given evidence, but said that the appellant had not been very strong that day and that the appellant's solicitors had made the choice for her just to give evidence and to rely on her family's 'witness statements'. The appellant had been able to have someone to go to hospital with her, despite the pandemic, because she could not attend alone. She had fainting spells.
30. Ms Alabi asserted that there was a material error of law in the decision of the First-tier Judge and that it should be set aside and remade afresh.

Analysis

31. The appellant's challenges are really disagreements with the findings of fact and credibility made by the judge on the very limited evidence provided.
32. Unsigned 'witness statements' are nothing of the kind: they are merely the solicitor's proof of evidence as to what the witness *might* say, with no confirmation that the witness has seen or approved it. That can sometimes be remedied, if a witness gives evidence and adopts the document, but that did not happen here.
33. I remind myself of the narrow circumstances in which it is appropriate to interfere with a finding of fact by a First-tier Judge who has heard the

parties give oral evidence: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 and *R (Iran) & Others v Secretary of State for the Home Department* [2005] EWCA Civ 982 at [90] in the judgment of Lord Justice Brooke, with whom Lord Justice Chadwick and Lord Justice Maurice Kay agreed.

34. That standard is not met here. There is neither perversity nor *Wednesbury* unreasonableness in the judge's reasoning which on the contrary is careful, proper, intelligible and adequate to support the conclusions reached. I decline to interfere with the First-tier Judge's findings of fact and credibility.
35. Out of an abundance of caution, I asked to be sent the full version of the curtailed medical letter from Croydon University Hospital dated 16 July 2019 and Ms Alabi provided it during the hearing. The author was Dr Natalie Horwood PhD FRCP, a consultant rheumatologist in Croydon Hospital's Rheumatology Department. She wrote to the appellant's general medical practitioner, Dr Georgia Whyte, copying in the appellant. After listing the conditions and medications already referred to above, Dr Horwood said this:

"Thank you for referring this 26-year-old Lady to the Rheumatology Department. She is not currently working. She used to train as a chef. For quite a while, she has had pain in her joints and previously has been told she was hypermobile as a child. Things have worsened over the past year.

She was sent for some physiotherapy in Hayes. The physiotherapist thought she would [need] to have a Rheumatology opinion due to ongoing pain. She is complaining of pain mostly around the hips and knees and this can keep her awake at night."

36. That part of the letter was in the bundle before the First-tier Judge. The omitted part of the letter continued as follows:

"She finds it difficult to get comfortable. She also gets swelling in her ankles and more recently with some finger pains. She has pain lying down at night but also, she finds it difficult to [manage] stairs or walking any distance. She is using a stick in her right hand.

She has moved in from the Oxted area. I do not have access to her investigations, but apparently, her blood tests were normal. She has also been noticing some clicking in the knee on the left, morning stiffness can be up to an hour, but there were no features of connective tissue disorders, although she does have a history of sinusitis.

On examination, she has a Beighton score of 9/9. She has stretch marks on her thighs and mild pes planus (flat feet). There is no frank joint synovitis.

My impression is that [this is] a benign hypermobility syndrome. Heart sounds are normal, but I have arranged an echocardiogram and also booked an MRI scan of her hips and knees (both). I have updated her blood tests and told her that we need to keep her vitamin D levels up in the high 70s.

Currently it is 50, so I would advise she takes an additional 1000iu (25mcg) daily.

I will refer her on to physiotherapy if nothing comes back from the scans unexpectedly.”

37. I am satisfied that even had this letter been available in full to the First-tier Judge, it would not have altered the findings of fact and credibility made. The appellant has suffered from hypermobility as a child, and still does, which causes pain. She had a stroke, some time before 2008, when she lived in Nigeria, but was able to study at degree level in the United Kingdom, and later to train as a chef.
38. The evidence before this judge was not strong enough to support the assertions made by Ms Alabi on the appellant’s behalf. The appellant, despite her health troubles, has not shown that she can meet the requirements of the Immigration Rules, nor that there are exceptional circumstances for which she should be granted leave to remain outside the Rules.
39. There is no material error of law in the First-tier Tribunal decision. I uphold the decision of the First-tier Judge and dismiss the appeal.

DECISION

40. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson

Date: 23 March 2021