



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04892/2020
[UI-2021-000883]**

THE IMMIGRATION ACTS

**Heard at Field House
On 18th February 2022**

**Decision & Reasons Promulgated
On 27th April 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MISS FOULERA ADAM-SAFIU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Allen instructed by Paul John & Co Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge C J Woolley, (“the judge”) who dismissed an appeal against the Secretary of State’s refusal dated 20th March 2020 of the appellant’s application for leave to remain on the basis of her private life in the UK.
2. The judge set out that the appellant was a citizen of Nigeria and single and had lived in the United Kingdom for eleven years and two months, having entered the United Kingdom on 3rd September 2008 on a domestic worker visa. Her application for ILR had previously been refused and she lived

with a friend and her family. The appellant was destitute and living with friends. It was noted at [6] that she had family in Nigeria.

3. The Secretary of State considered the application under paragraph 276ADE but concluded that she had not lived in the UK continuously for twenty years and was over the age of 25 years and there would be no very significant obstacles to her return to Nigeria where she spoke the languages, was familiar with the customs and had family there.
4. The application for permission to appeal against the judge's decision was predicated on two grounds.

Ground (i)

5. The judge had made findings which were unclear and factually incorrect, for example the appellant had not lived for her entirety in Nigeria as described by the judge at [37]. That was factually incorrect.
6. In the alternative, the judge's findings were not clear because there were references to the appellant's circumstances in Benin in the same paragraph and thus the judge had taken into account irrelevant factors.
7. In the alternative, the judge had failed to set out his findings that the appellant had "other connections in Nigeria" and "... will be able to adapt to life in her own country again" and "she would be able to participate successfully in society in that country".
8. Overall, the conclusion that there were no very significant obstacles to her integration in Nigeria was unsustainable.

Ground (ii)

9. In the assessment on proportionality under Article 8 outside the Rules the judge had taken into account irrelevant factors and made contradictory findings when considering the public interest. The judge found at [44] that "the appellant has had access to housing and other social resources while in the UK and she will continue to do so as long as she is in the UK. Her continued presence will be an economic burden on the country". At [46(vi)] the judge found that the appellant represented "a significant economic burden on the country in terms of the provision of housing and other services". The fact that the appellant relied on friends for accommodation and financial support does not mean that she is an economic burden in the UK and indeed at [46(ii)] the judge accepted the appellant had no recourse to public funds.
10. In respect of the economic wellbeing of the UK the judge had failed to consider the appellant entered as a domestic worker and worked in that capacity, paying taxes and contributing to the economy and if granted leave she would be able to work again and further, in the alternative, the judge, when making the proportionality assessment, had failed to consider the appellant's mistreatment whilst working as a domestic worker. The

judge accepted the appellant had been mistreated but failed to consider this had resulted in her changing her employer a number of times and placed her in a vulnerable position because she had to make applications for further leave without a passport. Her past treatment was material.

11. It was clear from **Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58** that a degree of “flexibility” existed in the assessment of private life. The length of time she had spent in the UK could not carry no weight.
12. At the hearing before me Mrs Allen emphasised the judge’s findings were muddled as set out in ground (i). In terms of the challenge to the findings on Article 8, she submitted that the findings at [44] were without justification because the appellant had entered the UK lawfully and worked for 8 years. Her employers were unable to maintain her, and she had been mistreated.
13. Mr Clarke submitted that there was no material error. It was important to look at the reasoning on paragraph 276ADE carefully. At [35] the judge had set out the correct law and at [36] had made a number of relevant findings. It was not challenged that the appellant had family in Nigeria and at [37] it was open to the judge to find the appellant, who clearly understood the chronology as to where the appellant had lived, could be regarded as an insider should she return to Nigeria. Given the totality of the text it could not be suggested that one sentence undermined the remainder of the findings. The judge had done enough.
14. In relation to Article 8 the finding in relation to access to housing and other social resources was specific to the five stage tests under **Razgar v SSHD [2004] UKHL 27**, specifically the legitimate aim, such that immigration control feeds into economic wellbeing and this was framed as a macro consideration. In terms of residence she should be residing lawfully in the UK. The judge accepted that the appellant had been mistreated but noted that the relevant immigration rules dealing with modern slavery and domestic workers were not applicable to the appellant and that finding was not challenged. As noted, the weight to be attached to private life could flexible but the judge did not apply no weight and that was clear from [46](iii).

Analysis

15. On ground (i) I am not persuaded that the findings are unclear, or any factual error undermines the decision to the extent that there is a material error of law. The judge set out the appropriate immigration rule and there was no challenge to the judge’s initial direction at [32] that paragraph 276ADE was applicable and thus the issue of whether there were ‘very significant obstacles’ to her reintegration into Nigeria was at the heart of the appeal. The judge correctly, at [34], approached the question in accordance with **Secretary of State v Kamara [2016] EWCA Civ 813**, which held that “integration” calls for a “broad evaluative judgment” of

whether the individual will be “enough of an insider in terms of understanding how life in that other country is conducted and a capacity to participate in it, have a reasonable opportunity to be accepted, operate on a day-to-day basis and to build up within a reasonable time a variety of human relationships”.

16. The judge gave a clear account of the chronology and the appellant’s immigration history. Indeed she was said to have entered the UK from Nigeria. Prior to the impugned sentence at [37], the judge set out that the appellant is now aged 45 years, had spent the majority of her life in Benin but found *‘it is significant that she had worked for 2 years as a domestic worker in Nigeria’* [36]. He noted that the country evidence confirmed it was relatively straightforward to move between Nigeria and Benin (in effect she would be able to keep contact with her mother and siblings who lived in Benin) and identified that she did so prior to her arrival in the UK in 2008 (indeed she had owned property in Benin until 2019). Crucially, the judge found that the appellant retained family in Nigeria and spoke the local languages. The judge did not accept that the appellant would be unable to obtain work in Nigeria at the age of 45 years particularly bearing in mind she had no serious health issues. The judge specifically noted that she had worked in Nigeria before as a domestic worker. At [37] the judge rejected the submission that the appellant would not be treated as an insider, and he made a series of independent findings on this point and prior to the said factual error if it can be so characterised. The appellant had spent the first five years of her life in Nigeria as well as later working there for 2 years. The judge reasoned *‘she has family there [Nigeria] and in Benin and has had work experience in both countries. I find this is a sufficiently close connection for her to be regarded as an insider. I find that the appellant would be regarded as an insider and have a reasonable opportunity of being accepted in Nigeria’*. Those were reasoned and clear findings in relation to Nigeria which were open to the judge.
17. The judge directed himself appropriately stating that mere hardship or mere difficulty on return would be insufficient and added *‘The appellant is a national of Nigeria who has lived in that country and who obtained a Nigerian passport from the embassy while she was in the UK on 23rd August 2016’*. Those findings were sufficient to sustain his finding that there would be no very significant obstacles to her return. The later finding in [37] which was said to be confused i.e. *‘She had spent her childhood, youth and early adulthood entirely in that country’* would appear to relate to both countries and in that the judge was correct when referring to Benin and Nigeria. He continued to point out that her parents and siblings were in Benin. He concluded she could relocate and integrate into either country, but this does not undermine his findings in relation to Nigeria which had already been made. The judge at [37] made clear in finality that there were no *‘very significant obstacles identified to her integration into Nigeria’*. That is correct. There were no obstacles so identified. The reference to her spending time in Benin during her childhood and youth do not undermine the overall findings when read as a whole. A careful

reading demonstrates that the judge clearly understood the appellant's history and where she had spent her formative and working years.

18. Turning to ground (ii) and the assessment of Article 8, again the judge properly directed himself legally citing **R (Agyarko)** [2017] UKSC 11 and whether there would be unjustifiably harsh consequences on the appellant's removal. As Mr Clarke indicated the reference to the appellant having access to housing and other social resources was initially made in the context of the third limb of **Razgar**. At the proportionality stage the judge initially noted that the appellant was financially independent and had had no recourse to public funds. He noted it was a neutral factor and this had no negative weight in terms of the proportionality exercise. I note however that at [46] (iv) there was an apparent contradiction by the judge when stating that the appellant 'represents a significant economic burden on the country in terms of the provision of *'housing and of other services'*'. It was submitted that the appellant was supported by a charity. In the papers, however, there is reference to the appellant accessing health services after receiving support from the charity, and as she was said to have no money, this can only mean the NHS and I am not persuaded that housing and health service costs are divisible or separately identifiable when referring overall to an economic burden on the country or public funds. On the evidence it would appear the appellant had accessed public services which would be an economic burden on the state and thus the judge had not taken into account an irrelevancy. Consideration must be given to the particular facts at the date of the hearing and that the appellant had formerly paid taxes, as stated, is not to the point. I find no material error in relation to the finding on financial independence.
19. Contrary to the grounds, the judge did accord some weight to the length of time the appellant had spent in the UK. He was aware that she had been in the UK since 2008, indeed he found she had established a private life through the length of her stay (she had no family here) and it was open to the judge to find that the appellant's status had been precarious since her arrival; albeit the domestic worker route, as he stated 'potentially offered a route to settlement', 'no guarantees of this are given' and the previous extensions of her visa could have given no rise to an expectation that she would be permitted to stay in the UK permanently. It was open to the judge to find that her leave was precarious and indeed on occasion unlawful. Since the expiry of her leave on 2nd June 2016, subsequent applications were refused rendering her presence in the UK unlawful. At [46](iii) the judge decided further to Section 117B(4) that little weight should be placed on her private life. It is not the case that *no* weight was given to her residence in the UK which was carefully considered and properly factored into the balance.
20. Turning to the issue of former mistreatment, at the hearing the judge referred counsel to paragraph 159 (domestic workers as victims of modern slavery), but it was confirmed that the appellant had declined to refer herself to the National Referral Mechanism. The question therefore was whether there were very significant obstacles to the appellant's return to

Nigeria and the judge noted finally at [46](ii) that the appellant was not said currently to being mistreated as a domestic worker, and although she *might* have been mistreated in the past she had 'declined referral to the NRM'. As he reasoned there was 'no positive grounds conclusion to modern slavery'. In the absence of further evidence in this regard those findings are sustainable. A generalised assertion does not take this case further forward in terms of establishing a material error of law. Within the proportionality assessment, the judge was entitled to note that the appellant had not availed herself of paragraph 159 of the Immigration Rules (domestic workers as victims of modern slavery) and to give the submission that her predicament was due to previous mistreatment little weight. Mere disagreement about the weight to be accorded to the evidence, which is a matter for the judge, should not be characterised as an error of law, **Herrera v SSHD** [2018] EWCA Civ 412 particularly as the appellant had chosen not to follow a path which was open to her. She had not fulfilled the requirements of the immigration rule said to apply, paragraph 276ADE, and weight must be given to the position of the Secretary of State as characterised by the rules when balancing the public and private interests.

21. As stated, Article 8 is not a general dispensing power and although sympathy must be extended to the appellant for any difficulties, she may have encountered in the past she had simply not made out the legal requirement under Article 8, as defined by **Agyarko** that there should be unjustifiably harsh consequences as a result of her removal. Bare assertions without more will not suffice to establish a successful Article 8 claim
22. In sum, I find no material error of law and the decision of First-tier Tribunal Judge Woolley will stand.

Notice of Decision

The appellant's appeal remains dismissed.

No anonymity direction is made.

Signed Helen Rimington

Date 28th March 2022

Upper Tribunal Judge Rimington