IAC-AH-KRL-V1

**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: HU/18573/2019**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 25 August 2021** | **On the 19 April 2022** |

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**OYOMA OGBORU**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms M Vidal, Haris Ali Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals against the decision of the Secretary of State made on 30 October 2019 to refuse her leave to remain in the United Kingdom. Her appeal against that decision was first heard by the First-tier Tribunal which, in a decision promulgated on 29 January 2020, dismissed her appeal. For the reasons set out in a decision of Upper Tribunal Judge Blundell promulgated on 17 September 2020, that decision was set aside and remitted to the First-tier Tribunal for a fresh hearing.

2. The appeal was next heard by the First-tier Tribunal on 25 November 2020 and, for the reasons set out in the decision promulgated on 9 December 2020 the appeal was dismissed. For the reasons set out in my decision promulgated on 13 May 2021, that decision was set aside. A copy of my decision is annexed to this decision.

3. The core of the appellant's case is twofold. First, she says that she has been resident in the United Kingdom for more than twenty years, having arrived in October 1999 using a passport to which she was not entitled. She is also she says in a genuine and subsisting relationship with her partner who is a British citizen and that requiring her to or them to go to live in Nigeria would amount to insurmountable obstacles such that pursuant to paragraph EX.1 and EX.2 of Appendix FM of the Immigration Rules they should be given leave to remain in the United Kingdom. Finally, she submits that it would be a disproportionate interference with her right to respect for her private life under Article 8 to require her to leave the United Kingdom.

4. The respondent's case is set out in the letter of 30 October 2019. She noted that the appellant claims to have entered the United Kingdom in October 1999 with a visit visa issued using a passport in the name of Bridget Okhawere but had not provided evidence of this. Although it is accepted that the appellant is in a relationship with her partner, Godfrey Okuse, she concluded that although the application for permission to remain on that basis did not fall for refusal on suitability grounds, she did not meet all the eligibility grounds given that she was in the United Kingdom unlawfully and that paragraphs EX1 and EX2 were not met. That was on the basis that the Secretary of State had not seen evidence that there were insurmountable obstacles, that is very significant difficulties that would be faced by the appellant or her partner in continuing family life together outside Nigeria and which could not be overcome or would entail very serious hardship for either of them. She noted that the medication he received was available in Nigeria and although it was claimed he had ill health and she was required to care for him, he worked full-time.

5. The Secretary of State did not accept the appellant's claim to have been living in the United Kingdom since 1999 though it was accepted that she had been here since January 2011. It was noted also that she had an adult child in Nigeria as did her partner and that she could return to Nigeria.

6. Turning to paragraph 276ADE(1) of the Immigration Rules, the Secretary of State was not satisfied the appellant met the requirements of paragraph 276ADE(1)(iii) as she had not lived in the United Kingdom for long enough nor was she satisfied that there were very significant obstacles to integration on return to Nigeria given she had lived the majority of her life there. The Secretary of State was not satisfied either that there were exceptional circumstances pursuant to paragraph GEN3.2 of Appendix FM such that she should be granted leave to remain in the United Kingdom.

## Discussion

7. While this is not an appeal under the immigration rules, the issue of whether the appellant meets the requirements of paragraphs 276ADE(3) or(6), Appendix FM, paragraphs EX1 and EX2 is relevant to the issue of whether her removal is proportionate; if she meets the requirements of the immigration rules, then removal would not be in the public interest.

8. Ms Vidal conceded in her submissions that the appellant could not meet the requirements of paragraph 276ADE(1)(iii) given the requirement to have been here for twenty years related to the date of application. She did, however, submit that the appellant had shown, on the evidence, that she had been here since October 1999.

9. With the exception of two photographs of the appellant taken in London, there is no documentary evidence of her presence in this country beyond letters of support. There are, for example, no medical records relating to the appellant.

10. The appellant's account, as set out in her witness statement is that she arrived at Gatwick Airport staying first in St Kilda Road, Harrow with her friend Lauren Okafor. Mrs Okafor lived there with her husband, Richard, and triplets. She then moved to north Harrow from about 2000 to 2005 living with a friend who was from Ghana but who has now moved to Canada after marriage. After that she moved to live in east London in a room provided by the founder of a church, "Mission of Faith Christ Gospel Ministries" because she was the praise and worship leader at the church by which, as she explained in oral evidence, she led the choir. She lived there until she met her partner and began to live with him.

11. On her account, as confirmed in oral evidence, she said that she did voluntary work at the Mission of Faith Christ Gospel Ministries, attended Eternal Life Ministries International and did some odd jobs to survive, such as cooking for people who in turn gave her what she referred to as "tips". It also appears from the evidence of the witnesses, Mrs Christopher and Mrs Martins, that she had helped care for their children when they were younger. She also took part in voluntary work, helping to feed the homeless.

12. In terms of support from the various churches in the appellant's bundle , the letter from the Jubilee Christian Centre and Ministerial Association dated 28 March 2018 says that she had been a member of the ministry for eleven years. It confirms her activities but it is lacking in much detail. Taken at its highest this evidence places her in the United Kingdom since approximately 2007. The letter of support from Mr Aisagbon adds little as it refers to knowing her only since 2011. Similarly, the letter from Olakayode Obeisun adds little as it refers to knowing the appellant and her partner for ten years and that is dated 4 April 2018. Again, the letter from Mr Okafor of 5 March 2018 refers to knowing the appellant for "over ten years as a friend" but provides no further details. The remaining material

from pages C129 to C136 whilst confirming that the appellant has been known to the authors, only covers a period in which it is accepted by the respondent that she was present in the United Kingdom.

13. In her oral evidence, the appellant explained that she had met Susan at the church where she attended and that she later got to meet Mrs Christopher and Patricia Martins whilst living with Susan. The appellant also said that she was involved as the head of praise and worship, by which she meant head of the choir, at weekday services, Sunday services and also in evangelising through voluntary work, feeding homeless people and things like that. Asked how long she was in contact with Mrs Christopher and Mrs Martins, she said that she had lost contact with Mrs. Christopher for a few years but had met her again whilst outside Whitechapel Hospital whilst her daughter was very sick. She said she could not recall when that was but it was a long time ago before she was married. She said that Mrs Martins had visited her when she was in Harrow frequently and she had visited her also. She said that the pastors of the church she says she had been involved with had helped her with money and she had not paid for the accommodation at the Mission of Faith Christ Gospel Ministry.

14. Asked in cross-examination for the name of the first church she attended, she said she had gone to the Deeper Life Bible Church when they were doing the “crossover” nights by which she meant 31 December to 1 January.

15. She was asked how she had travelled from Harrow to east London to attend church, she had taken a bus to Harrow on the Hill, then tube to Baker Street, changing for Elephant and Castle, then a bus to east London. On other occasions she had taken the Bakerloo line to Harlesden and then taken the over ground train to Hackney central. She said that it was Susan who had given her money to travel and that the church had sometimes given her tips which she used for travel.

16. She says she had been trying to find Lauren Okafor and had gone to St Kilda’s Road but not been able to find her. She had looked for her on Facebook but although she had found somebody there, she looked at the faces and none of them, looked like the people she had met. She said that had she been asked to get evidence from the people in the choir that she had been involved with she would have done so if asked. She said that if she had requested them to do so, then more people would have come to support her and she denied that the reason people had not come forward is that she had not been here. She said that she had some videos of her ministering and singing and there was some group pictures which she had taken, but that she had been not asked to bring them. She said she had not mentioned to the doctor she had been asked to provide a passport and could not do so. She denied saying in her application form that her son who is just working as a DJ on Friday and Saturday nights could support her in Nigeria.

17. Mrs Martins adopted her witness statement confirming that she had met the appellant in 2000 and that it was a social club meeting as an end of year party. She said that it had been organised by "Diamond Lady" in Ilderton Road. She said that she realised that the appellant spoke a native dialect which she understood but did not speak and recalled that she had lived in south east Harrow at the time. She said that sometimes between 2000 and 2005 the appellant would visit maybe two Sundays a month and sometimes spent the weekend with her. She said she had not known her to have any serious illness other than a hip replacement. She could not recall when that was. She said she continued to see her twice a month.

18. Cross-examined she said that she had met the appellant in January 2000 not, 2011, as she appeared previously to have said. Asked why in her witness statement she had said that the party was arranged by Urhobo, she said there was different groups came together for a party which was described as an "union" party. She said that they had been friends for many years and she could not write down all together, when asked why the witness statement lacked detail and she denied that she had known the appellant for only ten years or so.

19. Re-examined, she said that she sometimes went shopping with the appellant and said that she looked after her children who were born in 1994, 1996 and 2002. She said she had only one photograph of the appellant, in response to my questions, as she does not really take them.

20. Mrs Christopher also adopted her witness statement, adding that she had known the appellant since 2001 and had thought that this was in November that year. She said they had met at a house fellowship in Hackney where she had gone once a week, to which the appellant had been invited by a friend. This was the "Dominion Eagle Family Assembly" and that she had gone through photographs but the appellant was not there other than one with her standing by a banner. She said that she had lost contact with the appellant in 2005 but got in touch when her daughter was ill and she was so excited at that meeting, they kept in touch. She said that the church was no longer in existence but thought this had happened in 2006 but could not recall. She said she had looked over pictures but that she realised that the appellant was always at the back which is why she did not feature in them. Cross-examined, she confirmed that she had briefly lost contact with the appellant in 2005. Asked to comment on why she had said at paragraph 4 of her statement that they always kept in touch, it was only for a few months when the church had been closed, the appellant did not have a mobile phone and she did not recall where she was living. She denied that the witness statement was wrong and denied that she had not told the truth. She said that when the girls were young the appellant had been very helpful, particularly when she had been working nights. She rejected the submission that she would have given more detail if she had known the appellant for longer.

21. I do not accept the appellant's explanation for the lack of evidence from the churches with which she was closely involved, if, as she had said, she

had led the choir for a number of years. It is surprising that she had not provided any additional evidence to confirm that. The explanation, that she had not been asked, is not sufficient. She has now been through two appeals in the First-tier Tribunal, neither of which were successful yet no attempt has been made to get evidence from the churches involved. While it may be that the Diamond Eagle Church has closed, that does not explain why she could not get in contact with the members who she said she would have been able to do.

22. There is a singular lack of detail in the statements from Mrs Martins and Mrs Christopher. There is a significant inconsistency in the evidence of Mrs Christopher as to whether they had always been in contact. She first in her witness statement said they had always been in contact, yet said that they had fallen out of contact for "a few months". That is in contrast to the appellant's evidence which was that it was for a few years. It is also relevant to note that none of this or the chance meeting outside Whitechapel Hospital which the appellant and Mrs Christopher were able to recall is not mentioned in Mrs Christopher's witness statement. Mrs Martins does not mention either how helpful the appellant was in helping her with her children.

23. With regard to the evidence of Mrs Martins, it is again lacking in any detail. There is also the confusion of who had organised the meeting at which the appellant and Mrs Martins first met. While I can accept that there is consistency over it being 31 December/1 January, there is an inconsistency of who organised it. Although explanations have now been put forward, they are not in my view a sufficient basis for explaining the differences in what is now said.

24. I accept that there is a photograph of the appellant in front of a Diamond Eagle's banner but I cannot tell when that was taken. I accept also that there is a photograph taken of her on the London underground inside a tube train and that on the back of that the date is printed as 8 April 2004. But these stand in isolation. And it is worrying that the appellant, although referring to videos of her ministering and undertaking similar activities exists, these have not been provided. Again, she said she was not asked which seems unlikely.

25. I find it improbable that the appellant's solicitors would not have asked her to provide all and any material she possibly had relating to her presence in the United Kingdom. It is also convenient that she has been unable to get in contact either with Lauren Okafor or any of her family or for that matter Susan with whom she stayed for five years before Susan went to live in Canada.

26. The appellant has, I accept, given some detail about how she travelled to east London but it does not necessarily follow that she did so in 2000 or prior to 2010.

27. Further, I consider that had Mrs Christopher and Mrs Martins known the appellant for as long as claimed, or as well as claimed that they would have been able to give evidence of incidents or happenings which were memorable to them. But they have not done so with the exception, only mentioned in Mrs Christopher's oral evidence of the chance meeting outside Whitechapel Hospital.

28. Taking all of these factors into account and viewing the evidence as a whole I am not satisfied that the appellant or the witnesses have told me the truth about their relationship or the closeness thereof or that the appellant has lived in the United Kingdom since 1999.

29. I accept on the balance of probabilities that the appellant was here in 2004 given the dated photograph and I am also prepared to accept that she has been here since 2004 on that basis, but I am not satisfied she had been here before that. In reaching that conclusion I take into account Mr Wilding's submission that she could have left the United Kingdom and returned but I find that improbable.

30. It follows from these conclusions, that I do not accept the appellant is a witness on whose testimony I can rely.

31. Contrary to Ms Vidal's submissions, I do not consider that the threshold to engage paragraph EX1 or EX2 is as high as she submitted, that is it is effectively impossible for somebody to go out of the country, examples being given for serious ill health and/or somebody having refugee status which would prevent their return. That is contrary to case law and indeed the wording of EX1 and EX2. The threshold is high.

32. Turning then to paragraph 276ADE(1)(vi) I apply the test set out in SSHD v Kamara [2016] UKSC 813 at [14]. I accept that it would be difficult for the appellant to return to Nigeria given her age and for her to support herself there. That said, no issue is taken with the observation that she has a son there or that her husband has children there. There is insufficient material before me to show that they would not be able to assist or accommodate the appellant or that she would not be able to derive some form of income from trading as she had done in the past. She lived there for the greater part of her life before coming to the United Kingdom and whilst I accept that the country has changed since she left, and economically it is not in good shape as submitted by Ms Vidal, nonetheless I am not, satisfied viewing that evidence and the evidence of the background provided that the high threshold to show that there are very significant obstacles has on the facts of this case been met. I therefore find the appellant has not met the requirements of paragraph 276ADE(vi).

33. I then turn to whether or not there are exceptional circumstances in this case. On the basis of my findings of fact the appellant does not meet the requirements of the Immigration Rules. She has not shown that she has been here for twenty years and she has overstayed for a significant period. The starting point is that significant weight must be attached to

the fact that she does not meet the requirements of the Immigration Rules. I accept that she speaks English and I accept that she would not be a drain on resources but these are neutral but I consider also that little weight can be attached to the private and family life she has developed here, given that these were developed while she had no right to be here and when she had no expectation of being allowed to remain.

34. I accept that her husband is now 70 years of age and has a number of illnesses but these are not such that he is no longer able to work and he does so full-time. He has adult children in Nigeria and I am not satisfied on the basis of the submissions made to me or the evidence that on the particular facts of this case the weight to be attached to maintenance of immigration control is outweighed by the cumulative difficulties that the appellant would face on return. I accept that she would have difficulties in re-establishing herself albeit that she does not meet the threshold in 276ADE(vi) and that it would be difficult for her husband given his age to readjust to life in Nigeria or indeed for them to be separated, but these do not outweigh the public interest in this case.

35. Accordingly, for these reasons, I find that the decision to refuse leave to the appellant is proportionate and I dismiss the appeal on human rights grounds.

**Notice of Decision**

(1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

(2) I remake the decision by dismissing the appeal on all grounds.

No anonymity direction is made.

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 7 September 2021

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

ANNEX – ERROR OF LAW

IAC-FH-CK-V1

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/18573/2019

**THE IMMIGRATION ACTS**

**Heard at Field House via Skype**
**On 27 April 2021**
**Extempore**

**Decision & Reasons Promulgated**

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**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**MRS OYOMA OGBORU**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms M Vidal, Counsel instructed by Haris Ali Solicitors (Kingsley)
For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Chana promulgated on 9 December 2020 dismissing her appeal against a decision of the Secretary of State made on 30 October 2019 to refuse her leave to remain and to refuse her human rights claim. The appeal was previously heard in the First-tier Tribunal by Judge

Greasley in January 2020 but that decision was for the reasons given by Judge Blundell in his later decision set aside and remitted to the First-tier for rehearing. It thus came before Judge Chana.

2. The core of the appellant's case is twofold: she says that she has been resident in the United Kingdom for more than twenty years, having arrived in October 1999 using a passport to which she was not entitled; and, she is also she says in a genuine and subsisting relationship with her partner who is a British citizen and that requiring her or them to go to live in Nigeria would amount to insurmountable obstacles within paragraphs EX.1 and EX.2 of Appendix FM to the Immigration Rules. On either basis she should be given leave to remain in the United Kingdom. She also submits that it would be a disproportionate interference with her right to respect for her private life under Article 8 to require her to leave the United Kingdom.

3. The Secretary of State did not accept that the appellant had been living in the United Kingdom for twenty years although it is accepted that she has been present here since 2011. The Secretary of State did not accept either that the requirements of paragraphs EX.1 and EX.2 were met nor did the Secretary of State accept that removal would nonetheless be disproportionate.

4. The judge heard evidence from the appellant and her husband and two additional witnesses, Ms Esume and Ms Sonia Christopher. For reasons to which I will turn later, Ms Christopher is recorded as Ms Patricia Martins. The judge found that the appellant and her witnesses were not credible, noting in particular that Rosie Esume was "muddled". She also found that there were inconsistencies in the evidence regarding Miss Martins and she did not accept explanations given by the appellant regarding dates on photographs said to place her in the United Kingdom in 2001. The judge said at 50:

> "I do not accept the evidence of these two witnesses given some of the inconsistencies that the appellant has been in this country since 1999. I do not find it credible that if the appellant had lived in this country for twenty years there would be no documentary evidence to support that residence. I also do not accept the appellant's evidence that for the twenty years that she has been here she has never been to a doctor which is why she claims that she does not have records with the NHS."

The judge then found the appellant did not meet the requirements of the Immigration Rules as she had not resided in the country for twenty years.

5. The judge then went on to consider whether EX.1 and EX.2 were met, saying that the appellant had not done so; and, again, finding her lacking in credibility at paragraph [58]. She found at [61] that she does not meet these requirements and then went on to consider Article 8, finding that removal would not be disproportionate.

6. The appellant sought permission to appeal on four grounds:

   (i) the judge had erred in making a number of errors in the decision, specifically with regard to gender of the appellant, the names of the witnesses and the names of the churches which it is said the witnesses and the appellant met and/or to which they were connected.

   (ii) the judge had misdirected herself in law in that the judge had referred to the appellant seeking indefinite leave to remain under the Rules, which was incorrect.

   (iii) the judge had erred in her assessment of the credibility of the witnesses and that the core of her account the same and that applying Chiver this ought to have been accepted.

   (iv) the judge erred in her application of Article 8 subsequent to her findings that the appellant did not meet the requirements of the Rules.

7. Ms Vidal took me through a number of the errors of fact which are said to arise in the decision. She also took me to the assessment of credibility which is I consider connected.

8. The Secretary of State's case is that whilst there may well be factual errors and whilst ordinarily a mistaking of witnesses' names might well give rise to an error, but looked at holistically in this case none of these are material, that the judge did not misdirect herself materially with regard to the indefinite leave to remain, that the findings on credibility were justified and that the judge had not erred in her application of Article 8 after consideration of the Rules.

9. I remind myself following that a superior Tribunal should be very cautious about disturbing findings of fact reached by the First-tier Tribunal, who after all heard the evidence.

10. There are a number of errors in the decision of Judge Chana, some of which are of less relevance than others. It is careless to use the wrong gender but that does not necessarily amount to an error of fact giving rise to an error of law. Similarly, the reference to the appeal being refused on 23 November 2014 at paragraph 3 makes little or no sense and that sentence could be severed from the decision without any damage to the rest were the rest of the decision sustainable.

11. Where, however, I do begin to have serious concerns is the muddling of witnesses' names. That is because Ms Martins did not give evidence before the Tribunal but Ms Christopher did. Ms Martins did, however, give evidence before Judge Greasley in the previous appeal. Given that that decision was set aside, it is of some concern that this sort of confusion could have arisen. I accept that were it just a confusion about the names in one place, that would be the end of it if the testimony were accurately

recorded although there would be some degree of concern about errors on the part of the judge albeit not necessarily giving rise to an error of law but it is worrying that the judge keeps referring to Ms Martins. It is not just one reference at paragraph 33, it is also repeated at 34 and 45. There is then the confusion over the names of the church at which the appellant is said to have met Ms Esume. There are references throughout the decision to a "Dominican Bible Church" and there are also references to the "Dominican Eagle Church". This is of concern because the actual name of the church is the "Dominican Eagle Family Assembly". There are therefore concerns when the judge then takes and draws inferences at paragraph 46 from a failure to have mention a church which does not actually exist and was not in fact named. It is also unclear from paragraph 40 why the judge refers to the Dominical (sic) Bible Church as being where Ms Esume met the appellant because that is not what the witness said.

12. Moreover, if it was put to the appellant in cross-examination as is recorded at paragraph [26] that there had been no mention of a non-existent church, then that would give concern because weight cannot properly be attached to anything that a witness says in response to an incorrect proposition put to them in cross-examination. I bear in mind of course that the evidence in this case had covered a period of nine years, or longer than nine years, it is the years between 2011 and 1999 when it is said the appellant arrived in the United Kingdom. The evidence of Ms Esume would place her in the United Kingdom on New Year's Eve 1999, a date one might think is memorable, but it is also necessary to show that she was in this country for the rest of that period until 2011.

13. There are other points in that period which are referred to by the judge at [48] to [50] which are not challenged but equally, these do not prove that she was not here but what the judge has not done is indicate whether she had heard evidence from Ms Esume or others as to the frequency of their contact with the appellant between 1999 and 2011 which would have been relevant but the overall credibility findings with respect to the appellant's evidence are predicated to a great extent on the assessment of the witness evidence. I regret to say that I find that the judge's approach to the evidence both as regards the mistaking of the witnesses and the mistaking of the church names is such that it undermines the findings of fact and credibility in this case in a material way and for those reasons I consider that grounds 1 and 3 are made out.

14. I do not accept that ground 2 is made out. I do not accept that the judge's reference to indefinite leave to remain is indicative of any wrongful approach but in any event, for the reasons I have already given, the decision needs to be set aside and remade and equally, in the circumstances it is unnecessary for me to reach any findings with regard to ground 4.

15. Given the history of this case, I am not satisfied that it would be sensible or appropriate to remit it to the First-tier Tribunal for it to be heard for a third time; it should be retained in the Upper Tribunal to be remade and for

the avoidance of doubt, none of the findings with respect to long residence can be retained.

16. There is no challenge to the findings on EX.1 I preserve the findings with regard to the fact that the appellant does not meet the requirement of EX.1 or EX.2 and that finding will stand though it was not challenged in the grounds.

17. In addition to the decision being remade on the long residence basis, it will need to be remade on the Article 8 point basis once that is done, and taking into account the preserved findings with respect to EX1 and EX.2

**Notice of Decision**

1 The decision of the First-tier Tribunal involved the making of an error of law and I set it aside so far as it relates to the issue of long residence.

2 The decision will be remade in the Upper Tribunal on the basis that the findings of fact that the appellant did not meet the requirements of paragraphs EX.1 and EX.2 of the Immigration Rules are preserved. It will be for the Upper Tribunal to determine afresh whether the requirements of paragraph 276 ADE(1) are met, and whether removal will be in breach of the appellant's protected article 8 rights.

Signed Date 5 May 2021

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul