



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

Appeal Number: IA/12237/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd December 2014**

**Decision & Reasons
Promulgated
On 17th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**MS RACHEL KADIJATU ADEBIYI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant appeared in person

For the Respondent: Mr C Avery (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against a decision to remove her from the United Kingdom as an overstayer was dismissed by Designated First-tier Tribunal Judge Manuell ("the judge") in a decision promulgated on 30th September 2014.
2. The appellant arrived in the United Kingdom in January 2008, with a visit visa valid until 20th June that year. She applied for leave to remain in April 2013, unsuccessfully and a decision to remove her was made on 19th

February 2014. In her grounds of appeal she contended that her removal to the country of her nationality, Nigeria, would breach her human rights. The judge heard evidence from the appellant, through an interpreter and from the appellant's daughter, Mrs B Folashade.

3. The judge found that the appellant was an overstayer who had benefitted from improper access to the NHS. She could not meet the requirements of the Immigration Rules ("the rules") and no representations had been received suggesting that she was entitled to the grant of any leave. So far as the appellant's family life claim was concerned, the judge concluded that her removal would be in accordance with the law and proportionate. The appellant came to the United Kingdom for a temporary purpose, to the knowledge of her daughter and herself. She had a son in Nigeria (who travelled to this country with his mother for a visit at the time of the appellant's entry) and her relationship with her daughter here, now naturalised as a British citizen, could be maintained from abroad. The appellant's daughter could continue to support her mother in Nigeria.
4. The appellant applied for permission to appeal. It was contended that the judge erred in paragraph 17 of the decision. He found there that there was no evidence that the relationship between the appellant and her daughter had any unusual characteristics such as emotional dependency. The judge failed to "consider the full facts" as it was clear that there was emotional dependency and that the appellant relied upon her daughter emotionally, physically and mentally. The witness statements and supporting documents showed that the appellant felt comfortable with her daughter and relied upon her for care. She had no such connection with her son in Nigeria. The appellant had a strong attachment to her daughter and grandchildren and her strong Christian values compelled her to appreciate the value of "extensive family concept".
5. Permission to appeal was granted on 14th November 2014 on the basis that the judge may not have taken proper account of the evidence of physical dependency, in terms of health and personal care and may not have given adequate reasons for rejecting the submission made on the appellant's behalf in this regard.

Submissions on Error of Law

6. The appellant said that she was happy for her daughter, Mrs Folashade, to speak on her behalf. Mr Avery had no objection. The appellant said that she had no solicitors at present acting for her.
7. Mrs Folashade said that the judge was wrong to dismiss the appeal. The appellant had several children, including Mrs Folashade. Mrs Folashade did everything for her mother "medication wise" and was the only daughter. The judge erred in saying that there were no strong bonds between the appellant and Mrs Folashade and her children, the appellant's grandchildren.

8. Mrs Folashade said that the appellant had received NHS treatment. She had registered her mother and was aware that she was not entitled to NHS services. Her mother was over 60 years of age and treatment was free.
9. Mr Avery said that the basis of the case was properly set out in paragraph 11 of the decision. Counsel appearing for the appellant accepted that she was unable to meet the requirements of the rules and that she had not established any relevant private life ties. The case turned on her family life with her daughter and grandchildren. It was not a question of emotional ties but, rather, dependency. That explained why the judge did not feel obliged to say much about the relationship between the appellant and, for example, the grandchildren. He did, however, take into account the medical circumstances and the evidence in that context. He felt that the relationships themselves did not amount to more than the usual emotional ties. In any event, he carried out a proper proportionality assessment. At paragraph 20, he made sustainable findings. Some of these were adverse to the appellant. Having regard to Section 117 of the 2002 Act, the appellant did not speak English well and had been a burden on the state, not least in terms of the services she received from the NHS. The appellant could not succeed.
10. In a brief reply, Mrs Folashade said that she was able to pay for her mother's medicines. She was the only person able to help her mother and this would be so even if she returned to Nigeria. Mrs Folashade wanted to look after her mother because she had suffered. She wanted to keep the appellant with her. In Nigeria they might not discover that her mother has diabetes.

Conclusion on Error of Law

11. The decision has been carefully prepared and it is apparent, I find, that the judge had all the salient features of the case in mind. He heard oral evidence and took into account witness statements made by the appellant and by Mrs Folashade. The summary of that evidence, at paragraphs 7 to 9, shows that the judge was fully aware of and did not overlook the extent of the support provided by Mrs Folashade. The claim that the appellant relied on her daughter for transport to hospital appointments, meals and washing, was taken into account.
12. The judge's findings on the extent of the appellant's ill-health were open to him on the evidence. He took into account the medical records showing that she has relied on the NHS, notwithstanding her status as an overstayer, and that she nonetheless does not suffer from any life threatening condition. There was nothing to show that she would be unable to gain access to essential medical services in Nigeria. Mrs Folashade said that she feared that her mother's diabetes might be missed on return but the evidence does not support that claim.
13. The judge made a full assessment of the appellant's family life in the United Kingdom and was entitled to conclude that the relationship with

Mrs Folashade could be maintained following the appellant's removal to Nigeria. He did not overlook the claim regarding emotional and other dependency. As noted above, he had the appellant's evidence in mind, including her witness statement. This recorded her wish to spend the rest of her life with her daughter and her claim that there was no one else to support her. Mrs Folashade's witness statement was also clearly taken into account by the judge. That statement included a claim that there were no family members or relatives in Nigeria able to take care of the appellant. The judge found, however, that her son travelled with her to the United Kingdom for the purposes of a visit, before returning to Nigeria. He was entitled to find that her son was a potential source of support.

14. The judge was also entitled to make the adverse findings he did, in relation to the appellant's immigration history and to observe that it was a poor reflection on Mrs Folashade that she applied for British citizenship and took the citizenship oath in 2010 in the full knowledge that her mother was present here with her as an overstayer and benefitting from access to the NHS.
15. It was conceded on the appellant's behalf that the requirements of the rules were not met. The judge went on to make an Article 8 assessment, taking into account guidance given in recent cases, including MM (Lebanon) [2014] EWCA Civ 985. The appellant's poor immigration history told against her, as did her apparent inability to speak English. In weighing the competing interests, the judge had in mind the extent of the family life ties (there being no claim in relation to private life) and he gave due weight to the public interest in removal. He was entitled to conclude that the balance fell to be struck in the Secretary of State's favour and no error of law has been shown in his approach or in his conclusion.
16. The decision of the First-tier Tribunal, containing no error of law, shall stand.

DECISION

17. The decision of the First-tier Tribunal shall stand.

Signed

Date **23rd December 2014**

Deputy Upper Tribunal Judge R C Campbell

ANONYMITY

There has been no application for anonymity and I make no direction on this occasion.

Signed

Date **23rd December 2014**

Deputy Upper Tribunal Judge R C Campbell