



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

Appeal Number: IA/27647/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 19<sup>th</sup> January 2015**

**Decision & Reasons  
Promulgated**

**On 28<sup>th</sup> January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MISS OLUBUKOLA IBUKUN OGUNLUYI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms K Reid (Counsel)

For the Respondent: Miss L Kenny (HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Griffith, promulgated on 29<sup>th</sup> October 2014, following a hearing at Taylor House on 20<sup>th</sup> October 2014. In the determination, the judge allowed the appeal of Miss Olubukola Ibukun Ogunluyi. The Respondent subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is a female, a citizen of Nigeria, who was born on 11<sup>th</sup> October 1981. She has one child, a daughter referred to as E, who was

born on 24<sup>th</sup> March 2009. She appealed against the decision of the Respondent dated 19<sup>th</sup> June 2014 refusing her application to remain in the UK under Article 8 ECHR.

### **The Appellant's Claim**

3. The Appellant's claim is that she has lived continuously in the UK since arriving here as a child born in the UK who has not lived outside the UK. She claims to have no home to return to in Nigeria and no finances. The Appellant, however, has been an overstayer and this is acknowledged in her application. Her claim is that she has been in the UK since 1998, but the documentary evidence shows that she has been here since November 2000. The documentary evidence is in the form of an NHS medical card and her bank statements.

### **The Judge's Findings**

4. The judge observed that the refusal letter of 19<sup>th</sup> June 2014 accepts that the Appellant can only be taken to have been in the UK since 24<sup>th</sup> March 2009, when her daughter E was born in the UK, but that otherwise there is no means of determining when she arrived in this country. The judge held that the documentary evidence shows the Appellant to have been in the UK in November 2000. The judge heard that the Appellant maintained consistently that she arrived in the UK illegally in 1998, and has been living with her sister and brother-in-law since 1999, as part of their household.
5. The judge, held that the "Appellant has been telling the truth about the date she entered the UK and I find that she did so as claimed, on 30<sup>th</sup> January 1998, aged 16 and has been in the UK for sixteen years." The Appellant had now reached the age of 33 years. The judge held that she,
 

"has therefore lived a little over half her life in the UK. I am also satisfied that she and her daughter will have formed a strong bond with her family in the UK and that her relationship with her sister goes beyond the usual emotional ties between adult siblings in light of the level of dependency" (paragraph 37).
6. The judge had regard to the latest requirements of the Rules in paragraph 276ADE and that the amended Rules in July now refer to "very significant obstacles to the applicant's integration into the country to which she would have to go if required to leave the UK" (see paragraph 38). The Appellant, according to the judge, was still a minor when she came to the UK, and her late teenage years and adulthood has been spent in the UK.
7. The judge found that, "she has now spent just over half her life in the United Kingdom, which is a significant amount of time, during which she will have built up a private life. I do not know if the Appellant speaks any of the languages spoken in Nigeria, but her only connection to the country is her mother ..." (paragraph 41).

8. Thereafter, regard was had by the judge to the case of **Ogundimu**, and the relevant question of integration or the ability of a person who is removed to settle again in his or her own country. The judge held that,

“any tie the Appellant has to Nigeria through her mother after sixteen years of absence therefore significantly diminished and I am satisfied that the Appellant has no meaningful ties with Nigeria to assist her with reintegrating after spending half of her life in the UK, such that she meets the requirements of paragraph 276ADE(vi)” (paragraph 42).

The appeal was allowed.

### **Grounds of Application**

9. The grounds of application state that the judge was wrong to allow the appeal under Appendix FM and paragraph 276ADE.
10. On 9<sup>th</sup> December 2014, permission to appeal was granted.

### **Submissions**

11. At the hearing before me on 19<sup>th</sup> January 2015, Miss Kenny, appearing on behalf of the Respondent, relied upon the Grounds of Appeal. She made the following submissions. First, the evidence that the Appellant had been continuously living in the UK was flawed given that she had sought entry clearance in Nigeria in 2006, which was refused, and the Tribunal has not made any findings in this respect.
12. Second, even if the Appellant has resided continuously in the UK as claimed, her length of residence is virtually the same in Nigeria as it is in the UK, and therefore it cannot be said that she has spent over half her life here. Third, the judge erred in concluding that there were very significant obstacles to her integration in Nigeria. She had spent her first sixteen years of life there, and almost all of her youth, and all of her formative years, taking education, having a family there, and speaking the language there.
13. Finally, the judge failed to have regard to the fact that the Appellant has not had lawful stay in the UK and has overstayed and that the law requires that little weight should be given to any private life she has established in the UK in accordance with the Immigration Act 2014.
14. For her part, Ms Reid, appearing on behalf of the Appellant relied upon her Rule 24 response, which was detailed and extensive. She submitted that this was nothing more than an attempt to re-argue the case in the Upper Tribunal. The two main points that are being relied upon are, firstly, that the length of residence in the UK is the same as in Nigeria.
15. Secondly, that the balancing exercise in proportionality has not been properly performed by the judge. However, this is incorrect. First if one takes the length of residence in the UK, the suggestion that the Appellant

was out of the country and made an entry clearance application in 2006 was baseless. What has happened here is that the Appellant's name has been confused with somebody else. The Appellant was specifically cross-examined on this (see paragraph 21) and she replied that "the 2011 application was the first application she had made to the Respondent". Therefore, this means that the judge was aware of all the facts. The judge then made findings. She was entitled to do so. Second, the Appellant could produce her bank statements for the last seven years, taking her back to November 2000, and there was also an NHS card going to March 2001 (see paragraph 36 of the determination). The Appellant's evidence in this respect had been consistent. This is why the judge concluded that, "I am prepared to accept that the Appellant has been telling the truth about the date she entered the UK ..." (paragraph 37).

16. Third, the judge did give proper regard to paragraph 276ADE, and expressly said that she would refer to the changed wording of the Rules in July. But the judge found that the Appellant came to the UK aged 16, was now aged 33, and had spent over half her life here, and that she was not on good terms with her mother, not having returned since then. The decision was entirely open to the judge. There was no error of law. The decision was allowed under paragraph 276ADE(vi) and there is no reference here to the "public interest" in the way that there is in the Immigration Act 2014 at Section 117B. If the judge allowed the appeal under the Immigration Rules, it was unnecessary for the judge to go to Section 117B in the 2014 Act. This is despite the fact that submissions by both parties were made to the judge on the hearing date on Section 117B.
17. In reply, Miss Kenny submitted that paragraph 276ADE does not say that living in the UK for half your life entitles you to remain in this country. Instead, it speaks about one's "ties" to the country of origin. The Appellant had spent the first sixteen years of her life in Nigeria, had been there during her formative years, and must still have remembered the language there, such as to be able to reintegrate in that country. The judge's conclusions in this respect were flawed.

### **No Error of Law**

18. I am satisfied that the making of the decision by the judge does not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007). My reasons are as follows.
19. First, it was open to the judge to conclude that the Appellant had been in the UK since November 2000 (see paragraph 36). The allegation that the Appellant had made an entry clearance application from Nigeria in 2006 was not properly made out. The Appellant was cross-examined on this issue (see paragraph 21) and she confirmed that the application in 2011 was the first she had made. The judge was entitled to accept this in the face of the absence of any stronger evidence. The reasonable conclusion to draw is that the Appellant's name had been mixed up with somebody else. The judge accepted that the Appellant had been in the UK since 2000.

20. Second, the judge is not incorrect in saying that the Appellant has spent half her life in the UK and more. She concluded that she came to the UK aged 16 and was now 33 years of age.
21. Third, under paragraph 276ADE, it was open to the judge to conclude, that if the Appellant had not returned back to Nigeria over the last sixteen years, then she had lost her ties to that country. As she reasoned, the Appellant's ties to Nigeria were through her mother and that "after sixteen years of absence" these had "significantly diminished and I am satisfied that the Appellant has no meaningful ties with Nigeria to assist her with re-integrating ..." (paragraph 42). That was a finding that was open to the judge.
22. Finally, the judge was entitled to find that, "the Appellant's evidence, which has been consistent is that she arrived in the UK illegally in 1998 and that she has been living with her sister and brother-in-law since 1999 as part of their household" (paragraph 36).

### **Notice of Decision**

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

28<sup>th</sup> January 2015