



IAC-AH-SC-V1

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

Appeal Number: IA/39545/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30th November 2015**

**Decision & Reasons Promulgated
On 21st December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**KEHINDE TEMITAYO ADENIRAN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Fouladvand of Migrant Advisory and Advocacy Service

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Owens of the First-tier Tribunal (the FTT) promulgated on 19th May 2015.
2. The Appellant is a female Nigerian citizen born 3rd February 1973 who entered the United Kingdom in 2005 with entry clearance as a visitor. She thereafter remained in the UK without leave.

3. On 2nd July 2012 the Appellant applied for leave to remain in the UK outside the Immigration Rules, relying upon Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention). On 23rd October 2014 the Respondent issued a decision to remove the Appellant from the UK following refusal of a human rights claim. The reasons for refusal are contained in a letter dated 3rd October 2014.
4. The appeal was heard by the FTT on 14th April 2015. The FTT heard evidence from the Appellant and her mother for whom she acts as a carer. The FTT found that the appeal could not succeed under the Immigration Rules in relation to Article 8, having considered Appendix FM in relation to family life, and paragraph 276ADE in relation to private life. The FTT considered Article 8 outside the Immigration Rules and concluded that the Appellant's removal would not be disproportionate, and therefore the appeal was dismissed.
5. The Appellant applied for permission to appeal to the Upper Tribunal. In summary it was submitted that the Appellant had applied for leave to remain to continue to care for her disabled, ailing, elderly mother. It was submitted that there are compelling and compassionate circumstances for leave outside the rules and the FTT had erred by not allowing the appeal outside the Immigration Rules.
6. It was submitted that the FTT had failed to apply the principles in Beoku-Betts [2008] UKHL 39 by failing to consider the human rights of the Appellant's mother as well as the Appellant.
7. It was submitted that the FTT materially erred in law by failing to follow the principles in Razgar [2004] UKHL 27.
8. It was submitted that the decision made by the FTT is irrational.
9. Permission to appeal was granted by Judge P J M Hollingworth of the FTT in the following terms;

"An arguable error of law has arisen in that the judge has not considered whether there would be a breach of the Article 8 rights of the Appellant's mother. The judge found that Article 8(1) was engaged in respect of family life. At paragraph 58 the judge has only reached a conclusion in respect of the Appellant. An arguable error of law has arisen in the context of the inferences drawn by the judge in respect of the earlier application referred to in paragraph 54 given that the judge did not have the papers in respect of that appeal before him. The judge has not explained whether his finding that a deliberate omission had taken place has affected his assessment of the Appellant's credibility. The judge referred to the position when her mother sought to regularise her stay because of her health condition in 2005 when no mention was made of the Appellant."
10. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending in summary that the FTT directed itself appropriately and

made findings which were open to be made on the evidence. The Grounds of Appeal did not identify an error of law but amounted to a disagreement.

11. Directions were subsequently issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FTT decision should be set aside.

The Appellant's Submissions

12. At the hearing before me Mr Fouladvand relied upon the grounds contained within the application for permission to appeal and the grant of permission to appeal. Mr Fouladvand submitted that the FTT had failed to consider the Article 8 rights of the Appellant's mother. The FTT had not gone through the Razgar five-stage approach in relation to the Appellant's mother. The FTT had not placed weight upon the fact that the Appellant had been in the UK in excess of ten years and that her mother requires care which the Appellant provides.

The Respondent's Submissions

13. Mr Duffy submitted that the FTT had considered the mother's circumstances at paragraphs 50 and 56 of the decision. Mr Duffy submitted that the grounds and submissions disclosed no error of law, and although a different decision may have been made by a different judge, that was not the test, and in the absence of any error, the decision of the FTT should stand.

The Appellant's Response

14. Mr Fouladvand submitted that the key issue was that the human rights of the Appellant's mother had not been considered. Medical evidence had been produced in relation to her condition, and the Appellant is her mother's carer. Family life could not be carried on if they were separated.
15. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

16. I find no material error of law in the FTT decision. The decision is comprehensive, with findings of fact being made at paragraphs 18 - 29, the Immigration Rules considered at paragraphs 30 - 34, and Article 8 outside the rules being considered at paragraphs 35 - 58.
17. There is no challenge to the findings made by the FTT that the appeal cannot succeed with reference to either Appendix FM, or paragraph 276ADE.
18. The challenge relates to the assessment of Article 8 outside the rules, by the FTT, in which it was concluded that the Appellant's removal would not be a disproportionate breach.

19. The FTT did consider the Article 8 rights of the Appellant's mother. The FTT did follow the five-stage approach advocated in Razgar, which is set out at paragraph 41. At paragraph 43 the FTT found that the Appellant and her mother have family life that engages Article 8(1).
20. The FTT therefore accepted that Article 8 was engaged both in relation to family life between the Appellant and her mother, and private life.
21. The FTT correctly went on to consider the issue of proportionality.
22. The FTT considered the position of the Appellant's mother at paragraph 50, concluding that it was not reasonable to expect her to relocate to Nigeria, and accepting that she is settled in the UK and that she has significant health problems.
23. The FTT also considered the Appellant's mother at paragraph 56, finding that alternative care is available to her in the absence of the Appellant. It was noted that Social Services had offered some care, and that the Appellant's mother has three sons and their families' resident in the UK who could provide support.
24. There has been reference in the grant of permission to a finding made by the FTT in paragraph 54 about a previous application. I can ascertain no error on this issue. The FTT noted that the Appellant's mother had sought to regularise her stay in the UK because of her health condition in 2005 and had not mentioned the Appellant. The FTT found that this was a deliberate omission, and this was a finding open to be made on the evidence. As recorded by the FTT, the Appellant did not seek to claim that her presence in the UK had formed part of that earlier application. This in my view is not, in any event, a material issue. The FTT did in my view err in paragraph 54 in finding that in accordance with section 117B(4) and (5) little weight should be accorded to a private and family life between the Appellant and her mother. The correct position is that little weight should be given to a private life that has been formed when a person's immigration status is precarious or unlawful and little weight should be given to a relationship formed with a qualifying partner when a person is in the UK unlawfully. It is not therefore correct to say that little weight should be give to the family life formed between the Appellant and her mother, which the FTT found did engage Article 8. This is not a material error, because reading the decision as a whole, it is clear that the FTT accepted that the Appellant and her mother had a very close relationship, and a close emotional bond, which is described in paragraph 43. It was also accepted that the Appellant acted as her mother's carer, although the FTT went on to find that alternative care arrangements could be made.
25. The FTT erred in paragraph 53 in finding that the Appellant's ability to speak English and to be financially independent are factors in her favour. The Upper Tribunal in AM (Malawi) [2015] UKUT 0260 (IAC) found in the second paragraph to the headnote that;

“An Appellant can obtain no positive right to a grant of leave to remain from either section 117B(2) or (3), whatever the degree of his fluency in English, or the strength of his financial resources.”

26. Therefore those factors do not go in favour of the Appellant, and although this is an error, it is not material, and does not assist the Appellant’s claim that the FTT decision should be set aside.
27. The FTT has considered all material factors in this appeal, and not placed weight upon any immaterial factor. The FTT properly considered the private and family life of both the Appellant and her mother.
28. The grounds contained within the application for permission to appeal evidence a strong disagreement with the conclusions reached by the FTT, but they do not disclose any material error of law.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The appeal is dismissed.

Anonymity

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity and the Upper Tribunal makes no anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

4th December 2015

TO THE RESPONDENT FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

4th December 2015