



IAC-FH-CK-V1

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

Appeal Number: IA/22964/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 6th January 2016**

**Decision & Reasons Promulgated
On 1st February 2016**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**MISS ABIMBOLA ADEREHINWO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Reid, Counsel instructed by Perera & Co Solicitors
For the Respondent: Ms S Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria born on 15th May 1982. Her appeal against the refusal of leave to remain under paragraph 276ADE of the Immigration Rules and Article 8 was dismissed by First-tier Tribunal Judge Moore in a decision promulgated on 14th July 2015.
2. The Appellant appealed on three grounds:
 - (i) the judge wrongly found the Appellant's case to be implausible on the basis of his own views and background;
 - (ii) the judge erred in failing to give reasons; and

(iii) the judge erred in failing to consider the correct issue.

3. Permission to appeal was granted by Designated First-tier Tribunal Judge Zucker on 28th October 2015 on the following grounds:

“It is arguable that the judge did not take account of cultural factors when making findings; failed adequately to give reasons; and premised findings on the wrong factual matrix given the error in the year of entry to the UK at paragraph 25. All grounds are arguable.”

4. In the Rule 24 response, the Respondent opposed the Appellant’s appeal on the basis that the judge’s reference to 2008 in paragraph 25 was clearly a typographical error because the judge accepted in the same paragraph that the Appellant had been in the UK at least from 2003 if not before. The judge had carefully considered the Appellant’s claim and noted several elements which he found to be implausible including her chance meeting with a friend in 2003 at paragraph 29. The judge’s findings were neither irrational nor inadequately reasoned and were open to him on the evidence. Further, there was no material error in the decision given that the Appellant had not claimed asylum and she had failed to provide sufficient reasons why she could not return to Nigeria.

Submissions

5. Ms Reid relied on the grounds of appeal and submitted that given the error in relation to the date at [25] and the lack of reasons there had been a lack of care and a lack of scrutiny in the judge’s consideration of the Appellant’s claim.
6. In relation to ground 1 the Appellant challenges the judge’s finding at [24] where he states: “I find it odd, if not unusual, that the mother of this Appellant opposed the forced marriage to a politician, but nevertheless allowed it to happen because this was the wish of the Appellant’s father.” It was submitted that this finding failed to take into account the cultural context in which the Appellant’s forced marriage took place, in particular the significance of the male as the head of the household which would prevent the Appellant’s mother from being able to stop the marriage.
7. Ms Reid submitted that the judge’s finding that the Appellant’s account was implausible had affected the Judge’s assessment of her credibility. This ground was material because it was relevant to the Appellant’s family ties in Nigeria and her ability to return.
8. The judge accepted that the Appellant had used an agent to enter the UK, but he did not accept that she had done so because she had been forced into marriage. There was no analysis of why the judge had accepted the use of the agent, but not the forced marriage. This lack of reasoning rendered the finding at [24] unsafe, not only because it ignored the cultural context but also because it was inadequately reasoned.

9. In relation to the claimed date of entry the judge had given no reason as to why he did not believe that the Appellant had been here since 1998 when he accepted she was here before 2003. This again was material because the length of residence was relevant to the Appellant's ability to return to Nigeria.
10. In [29] the judge's reasons for rejecting the Appellant's account that her parents were dead was lacking in reasons. The judge did not consider the relationship with the Appellant's father given that she had been forced into marriage and her mother had been unable to prevent it. There was no analysis in [29] as to why the Appellant would have support from her family on return. In summary, the judge had reached conclusions which were not reasoned and had made distinctions without an analysis of why he accepted part of the Appellant's case but not others.
11. Ms Sreeraman relied on the Rule 24 response and submitted that the finding at [24] was not material to the overall decision. The judge had found that the Appellant was not a reliable witness and had given adequate reasons for his conclusions. He had set down clearly what he accepted and what he rejected, namely that the Appellant's mother had helped her leave Nigeria and that she had used an agent and a false passport. This was consistent with the fact that there was no record of entry into the UK.
12. There were adequate reasons in the decision and no material error in the judge's assessment of the evidence. The lack of family ties in itself was not sufficient for the Appellant to succeed under the Immigration Rules. The Appellant's own evidence was that she had relatives in Nigeria, aunts and uncles. It was clear from reading the decision as a whole that the judge's findings were open to him on the evidence and the errors identified in the grounds were not material even if taken cumulatively.
13. Ms Reid submitted that the judge had made no mention of the lack of record of the Appellant's entry into the UK and this was not his reason for accepting that she had used an agent. The judge had not given reasons why he accepted the use of the agent but rejected the forced marriage and the rejection of the forced marriage was material to the decision under paragraph 276ADE because it was relevant to the quality of family ties in Nigeria.

Discussion and Conclusions

Ground 1: the judge's finding that the Appellant's claim to have been subjected to a forced marriage was implausible

14. I find that the judge's conclusions at [24] were not material to his decision under paragraph 276ADE because the judge accepted that the Appellant was afraid to return to Nigeria, but not the reason for it. The Appellant had not made an asylum claim and therefore the reasons for not wanting to return to Nigeria were irrelevant.

15. It has been submitted that the findings at [24] were relevant to family ties in Nigeria. However, the judge's findings at [29] deal adequately with this issue and, for the reasons given below, I find that the judge has set out adequate reasons why the Appellant still has family ties in Nigeria.

Ground 2: the failure to give reasons

16. I am of the view that the judge has given adequate reasons for why he does not accept that the Appellant's parents are deceased. Those reasons, set out in [29], are that there was no evidence to support the Appellant's claim that her parents were dead. She claimed to have had a chance meeting with a friend in 2003, but there was no evidence from the friend. She claimed that she had lost contact with her mother since 2003, but yet she was still unable to give details of how or when her mother had died. There was no evidence or death certificate to support the claim that both parents were dead and, at the date of hearing, the Appellant was still unaware of the claimed circumstances of her parents' death. I find that the judge has given adequate reasons for rejecting the Appellant's claim that her parents are deceased. The Appellant had failed to produce evidence which she ought to have been able to produce if her account were true.

Ground 3: the error in relation to dates or the failure to give the claim anxious scrutiny

17. Notwithstanding the fact that the Appellant was unable to show that she entered the UK in 1998, the judge accepted that she had been in the UK prior to 2003. There may well be a typographical error in [25] which refers to 2008, but it is clear that the judge has assessed the Appellant's length of residence in the UK on the basis that she entered in 2003 or before. This is evident from [30] where the judge states that the Appellant spent the first 16 years of her life, if not longer, in Nigeria. The judge accepted that the Appellant may not have worked in Nigeria, but she attended school there and spent most of her teenage life in that country.
18. Further at [33] the judge states:

"There is in my view no cultural barriers to such a return on the part of this Appellant, though I accept that there would be disruption and some distress having to return to a country where this Appellant had not lived for somewhere between 12 and 16 years."
19. The judge clearly assessed the Appellant's length of residence in the UK at its highest. In any event, the Appellant could not satisfy paragraph 276ADE of the Immigration Rules in relation to length of residence. It is clear from [34] to [37] that the judge assessed the Appellant's claimed length of residence of 16 years and he gave anxious scrutiny to the situation of her two children. There was indeed no challenge to the judge's findings at [34] onwards.
20. Accordingly, I find that the Appellant failed to provide sufficient evidence to satisfy paragraph 276ADE of the Immigration Rules and the judge's

findings were open to him on the evidence. There was no arguable error of law in the decision even if the grounds of appeal are taken cumulatively. On the facts asserted, the Appellant could return to Nigeria and was unable to satisfy the Immigration Rules. The judge's reasons at [24] onwards were adequate to support his findings.

Notice of Decision

The Appellant's appeal is dismissed.

No anonymity direction is made.

Signed J Frances

Date: 28th January 2016

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

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

Signed J Frances

Date: 28th January 2016

Upper Tribunal Judge Frances