



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/01436/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 September 2017**

**Decision & Reasons  
Promulgated  
On 28 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE O'RYAN**

**Between**

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

Appellant

**and**

**MRS GRACE ADELEYE  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr D Clarke, Home Office Presenting Officer  
For the Respondent: Mr M Symes, Counsel, instructed by Margaret Olusegun Solicitors

**DECISION AND REASONS**

1. The Appellant Secretary of State brings an appeal against a decision of First-tier Tribunal Judge Atreya dated 30 December 2016 allowing the Respondent's human rights appeal. The Respondent had appealed against the Appellant's decision of 23 June 2015 refusing her human rights application made on or around 28 May 2015.
2. The Respondent was born on 14 January 1959 and is therefore 57 years old. Her immigration history is, in summary, that she had arrived in the

United Kingdom in 2002 with valid entry clearance as a student nurse. She was granted further periods of leave to remain as a student nurse, the last expiring on 30 May 2010. She had returned to Nigeria on a number of occasions during that time. The Respondent made further applications for leave to remain or for a residence card under EEA Regulations, unsuccessfully. She has been an overstayer in the UK since 30 May 2010.

3. The Respondent has a daughter present in the United Kingdom. At the relevant time of the Appellant's decision on 23 June 2015, the Respondent's daughter had limited leave to remain as a dependant of her husband, who was a Tier 1 points-based Migrant. The Appellant's daughter and husband have two children aged 4 and just over 1 respectively at the time of the judge's decision. The basis on which the Respondent sought leave to remain, and argued that her removal from the United Kingdom would amount to a disproportionate interference with her private and family life, was on the basis that she lived with her daughter and grandchildren, and provided an important part of the care of the children. Her son-in-law spent much of his time working in Glasgow.
4. The evidence of the Respondent and supporting witnesses before the judge was not challenged by way of cross-examination (see paragraph 4 of the judge's decision). I find it significant that there was no challenge to the Respondent's evidence. The judge made the following findings of fact.

"It is clear to me from the evidence presented to me that the Appellant is a key and integral member of the family (paragraph 23).

The Appellant provides essential support to her daughter which is above and beyond the normal level of support provided by grandparents. Her daughter is vulnerable because of past postnatal depression. The Appellant has lived with her daughter since the birth of her daughter's second child (just over a year old at the date of hearing)."

5. Before the judge was also a report of an independent social worker. The judge noted that her qualifications and credentials were not disputed by the Appellant. She was clearly experienced in the family jurisdiction. The judge accepted that the social worker was an independent and impartial expert who was qualified and able to undertake an assessment on the functioning of the family (paragraph 24). The judge summarised relevant extracts from the social worker's report, which, in the context of the judge's decision overall, she must be taken to have agreed with.
6. The judge set out the following extracts from the social worker's report:

"Having gained a fuller understanding of the role she plays within the family, it is clear that the family would likely be at a disadvantage without her continued support and intervention as there is no service that could provide this level of healthcare even with financial support.

In my professional opinion Ms Grace Adeleye continues to fulfil an essential role as maternal grandmother providing both emotional and practical support for her daughter and grandchildren. She has ensured that her daughter has been able to function as a parent with a child who has repeating illnesses the effect of which the mother has found quite debilitating and stressful.

Ms Adeleye would like to be available for her family, supporting her daughter to manage her grandchildren's care. She has been integral to the family functioning and has provided both a practical and emotional support for her daughter and grandchildren and would be exceptionally grateful for the opportunity to continue to provide this level of support."

7. The judge also noted at paragraph 26 that the younger daughter had been admitted at least three times to hospital with bronchitis or other viruses and had required nebulisers. The judge found that the child had been referred to an asthma clinic and suffered from a serious medical condition that has required hospitalisation on more than one occasion (paragraph 27).
8. Against that background, and findings of fact, the judge considered applicable Immigration Rules, and Article 8 of the European Convention on Human Rights. The judge directed herself as to the terms of paragraph 276ADE(1)(vi) of the Immigration Rules, at para 29:

"(vi) ... is aged 18 years of above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

The judge then found as follows:

"30. In my judgment there are *very significant obstacles* for the Appellant to return to Nigeria. The Appellant has lived here since 2003, i.e. thirteen years. Her children and grandchildren are in the United Kingdom including a British son [*name given*]. She has no children in Nigeria and no other close family in Nigeria because she is a single woman and her only other child lives in Canada. She has lived in the United Kingdom for thirteen years and is an integral part of her daughter's life and provides love and practical emotional support to her daughter above and beyond the ordinary because she lives with her grandchildren, their father being absent during the working week and because the youngest child has health problems including asthma which has required hospitalisation. The youngest child is vulnerable on account of her health and asthma which required hospital admissions. The Appellant provides essential care and support to her daughter and grandchildren.

31. I allow the appeal under paragraph 276ADE of the Immigration Rules.”

I also note that at the end of her decision, at paragraph 52, the judge purports to allow the appeal under paragraph 276ADE(1)(vi) of the Immigration Rules.

9. At paragraph 32 onwards the judge considers further or alternatively, if she was wrong about her assessment under paragraph 276ADE(1)(vi) of the Rules, the Respondent’s position under Article 8 of the ECHR.
10. The judge ultimately found that the decision to remove the Respondent from the United Kingdom would be disproportionate to her private and family life, and allowed the appeal on human rights grounds at paragraph 51 of her decision.
11. The Appellant Secretary of State applied for permission to appeal against that decision in grounds dated 11 January 2017. In her first ground the Appellant argues that the judge has misdirected herself in law in her consideration of paragraph 276ADE(1)(vi). In summary, the Appellant argues that most of the considerations which the judge had set out at that part of her decision related to the Respondent’s ties to the United Kingdom, and not to whether, as was required under the relevant Rule, the consideration of whether the Respondent had very significant obstacles to integration into Nigeria. Further, the Respondent argued that the test of very significant obstacles to integration was a high threshold and the judge had failed to engage with that Rule and the factors relied upon did not demonstrate that the Rule had been met.
12. The Secretary of State’s second ground challenges the judge’s finding on Article 8. It was argued that the judge had failed to appreciate the public interest in removing the Respondent; any disadvantage that the children may suffer without the Respondent could be mitigated by other assistance or the family moving to Glasgow; parental responsibility remained with the children’s parents; the obligation on the judge under s.117B NIAA 2002 to place little weight on the Respondent’s private life was not manifested in the judge’s decision; there was no reasoning as to why the Respondent had a family life with her adult son; the Respondent was not financially independent. In a decision dated 20 July 2017 by First-tier Tribunal Judge Grimmett permission has been given on both grounds.
13. At the outset of the hearing before me, I indicated to the parties my preliminary view that there appeared to be an error in the judge having purported to allow the Respondent’s appeal under the Immigration Rules. As has been the case since the Immigration Act 2014 was implemented, the First-tier Tribunal no longer has jurisdiction to allow an appeal under the Immigration Rules. The only ground of appeal available in the present appeal was whether the decision to refuse the Respondent’s human rights claim was unlawful under Section 6 of the Human Rights Act 1998, i.e. on

the basis that the decision represented a disproportionate interference with the Respondent's rights under Article 8 ECHR.

14. Of course, whether a particular Immigration Rule is satisfied is a relevant finding to be made by a First-tier Judge, and the positive satisfaction of the Immigration Rules will be a weighty consideration in the proportionality balancing exercise (see *Mostafa* (Article 8 in entry clearance) [2015] UKUT 112 (IAC)). That was not the judge's approach in the present case, however. Both parties agreed that that was an error of approach, but whether that was material depended on other matters.
15. Mr Clarke advanced his grounds of appeal as per the grounds on which permission had been granted. In fairness, Mr Symes did not put up very great resistance to the proposition that the judge had erred in law in appearing to find that paragraph 276ADE(1)(vi) had been satisfied. Mr Symes was prepared to accept that the issue raised in that paragraph of the Rules was essentially one of the situation that an individual may face upon return to their country of origin, rather than an assessment of the individual's ties to the United Kingdom.
16. In that regard I find that the judge did err in law not only in purporting to allow the appeal under immigration rules (para 31) but also in purporting to find that the requirements of paragraph 276ADE(1)(vi) were met, given that most of the considerations that she set out at paragraph 30 were considerations relating to the Respondent's ties to the United Kingdom, and the only issue relevant to whether there would be very significant obstacles to the Respondent's integration in Nigeria were the fact that she had no children in that country and no other close family ties there and was a single woman. Although Mr Symes did not concede that there was any material error, I find that there was, as the judge has taken into account irrelevant considerations, and has failed to give adequate reasons for her finding that 276ADE(1)(vi) was satisfied.
16. However, Mr Symes defended the attack on the judge's alternative finding under Article 8 more vigorously. He argued that she had directed herself entirely appropriately in law at paragraphs 33 to 34, identifying that there needed to be compelling reasons why the Respondent's removal would be disproportionate and that she was entitled to leave to remain outside the Rules.
17. At paragraph 37 the judge had reiterated her finding that the Respondent provided a primary carer type role to her grandchildren. At paragraph 38 the judge found as follows:

"I find that the Appellant is a biological grandparent to the children and provides the quality of care of a primary carer or parent through her care and support and is an integral part of the family unit. The rights of the grandchildren have to be taken into account in the context of the Appellant's appeal."

18. Mr Symes argued that that was a finding which is entirely open to the judge on the evidence before her, in particular with regard to the Respondent's evidence not having been challenged by the Appellant Secretary of State. Mr Symes argued that there was an appropriate further direction in law at paragraph 39 of the decision regarding the five stage steps to consider in the case of Razgar v Secretary of State for the Home Department [2004] EWCA Civ 840 and that the judge considered the relevant considerations in Section 117B of the Nationality, Immigration and Asylum Act 2002 (see judge's decision paragraph 44). She took into account at paragraphs 32 and 40 the Respondent's overstaying, and at paragraphs 32 and 44 the significance that the Respondent did not meet the immigration rules (in this alternate finding).
19. Mr Symes argued that the judge had made reference to the importance of maintaining Immigration Rules and the public interest in doing so and that the judge's reasons overall were sustainable, and her findings were ones which were open to her on the evidence.
20. I find that the Secretary of State's challenge in her second ground represents, in general terms, a disagreement with the outcome of the appeal under Article 8. The submissions set out at paragraphs 6 to 10 of the grounds of appeal have the tenor more of arguments to be made on the merits, to the First-tier Tribunal, rather than identifying specific material errors of law in the judge's decision.
21. Mr Clarke accepted that the judge had not at paragraph 46 made a finding that the Respondent had a family life with her British citizen brother, and that she had not materially misdirected herself in law or failed to give reasons on that matter, and for the avoidance of doubt, I find that any reference to the Respondent's brother's presence in the United Kingdom appears to have played little relevance in the judge's overall determination of the appeal.
22. I agree with and adopt as part of my reasoning the submissions of Mr Symes. I find that the Appellant Secretary of State's grounds of appeal do not identify a material error of law. Although the judge erred in law in purporting to allow the appeal under paragraph 276ADE(1)(vi) I find that this is not material to her conclusion that the appeal fell to be allowed under Article 8 ECHR. For those reasons, I find that there is no material error of law in the judge's decision, and I dismiss the Appellant's appeal.

### **Notice of Decision**

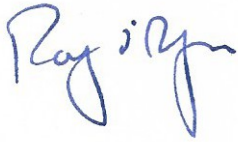
The judge's decision did not involve the making of a material error of law.

Secretary of State's appeal is dismissed.

No anonymity direction is made.

Signed:

Date: 28.11.17

A handwritten signature in blue ink, appearing to read 'Ray O'Ryan'.

Deputy Upper Tribunal Judge O’Ryan