



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

Appeal Number: HU/05609/2015

**THE IMMIGRATION ACTS**

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

**Decision sent to parties on  
On 8 May 2017**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MS SHAKI ORITOKÉ MADKOUR-ALI  
(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr K Norton, a Senior Home Office Presenting Officer

For the Respondent: Ms P Yong, instructed by Greenland Lawyers LLP

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal, allowing the claimant's appeal against the Secretary of State's decision of on 14 September 2015 to refuse the claimant leave to remain on the basis of private and family life with a British citizen of Nigerian origin.

## **Background**

2. The claimant has a poor immigration history. She entered the United Kingdom on 20 February 2003, using a multiple entry visit visa which permitted her to enter and leave the United Kingdom until 2005, but only for six months on each occasion. At [43] of the First-tier Tribunal decision, the Judge misdirected himself, approaching the appeal on the basis that the claimant's multi-entry visa made her residence in the United Kingdom lawful until 2005. There was no extant leave after 20 August 2003.
3. The claimant did not embark for Nigeria when her visit visa ran out on 20 August 2003. She has an ex-partner in Nigeria, who is bringing up their two children, whom it is said she fears because of previous violence and threats. There is not and never has been an asylum claim in relation to that asserted fear.
4. The claimant married an Egyptian man in the United Kingdom in 2004 and on 1 September 2004 based on that marriage application she applied to remain in the United Kingdom as the spouse of a settled person. The claimant had no extant leave when the spouse application was made. The relationship between the claimant and her Egyptian spouse broke down, at some time before January 2008, although they remain married.
5. In January 2008, the claimant met her British partner, and began living with him. Their relationship has now lasted a little over 9 years. Her partner is of Nigerian origin and has lived in the United Kingdom for 30 years.
6. The Secretary of State did not deal with the spouse application promptly. The claimant did not inform the Secretary of State that her relationship with her spouse had broken down, or that she was living with someone else. On 20 November 2008, the Secretary of State refused the spouse application. The claimant appealed against the refusal of her spouse visa in December 2008. The spouse appeal is not before me so I do not know whether she disclosed the relationship with her British partner, which had then lasted almost a year. On 15 January 2009 the claimant withdrew her spouse appeal: once again she did not embark for Nigeria.
7. The claimant remained in the United Kingdom, without leave, until 4 April 2011 when she made an application for leave to remain on family and private life grounds based on the relationship with her British partner. That application was refused with no right of appeal on 26 May 2011. The

claimant sought reconsideration of the decision and the Secretary of State made a further decision on 20 October 2011 maintaining her refusal.

8. On 18 June 2015, some four years later, the claimant made the present human rights application. That application also was refused and the claimant appealed to the First-tier Tribunal.

### **First-tier Tribunal decision**

9. As stated above, the First-tier Tribunal Judge misdirected himself as to whether the claimant had extant leave at the date of her spouse application. That is an important error, which affected the rest of his decision, and in particular, his partial assessment of the factors which he is required to consider under part VA of the Nationality, Immigration and Asylum Act 2002 (as amended) at section 117B thereof.
10. At paragraph [40] of the First-tier Tribunal decision, the judge set out the provisions of section 117B. At [46], without saying so in terms, he considered the effect of sub-sections 117B(2) and 117B(3). However, the Judge failed to engage at all with the 'little weight' provisions at sub-sections 117B(4) and 117B(5), the effect of which is that little weight can be given to a private life or a relationship formed with a qualifying partner while the claimant is in the United Kingdom unlawfully, or to a private life established by a person when their immigration status is precarious. In this case the claimant had precarious immigration status for six months in 2003 and thereafter all of her residence in the United Kingdom has been unlawful: it follows that little weight can be given to the relationship she has with her British partner because of the effect of section 117B(4).
11. The observations in the decision in relation to the fear that the claimant has of return to Nigeria belong more properly in an asylum appeal, of which neither the First-tier Tribunal nor this Tribunal are seised. The credibility finding at paragraph 36 is also inadequately reasoned and unsustainable.

### **Conclusion**

12. I am satisfied that there are errors of fact and law in the decision of the First-tier Tribunal, such that it must be set aside and remade. It is not appropriate to remake the decision today. The decision will be remade in the First-tier Tribunal with no findings of fact or credibility preserved.
13. The Secretary of State is expected to disclose to the First-tier Tribunal for the rehearing of this appeal copies of the applicant's spouse application and the Secretary of State's decisions thereon.
14. The claimant is expected to disclose the status of her divorce proceedings and precisely when her marriage irretrievably broke down.

15. If either party fails to disclose the documents mentioned at (13) and (14) above, the First-tier Tribunal will take into account such failure when considering credibility and remaking the decision.

### **Decision**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Signed: **Judith A J C Gleeson**  
Upper Tribunal Judge Gleeson

Date: 5 May 2017