



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/24557/2016

THE IMMIGRATION ACTS

Heard at Field House
On 28th July 2017

Decision & Reasons Promulgated
On 11th August 2017

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MS STELLA OLA-AYO OGUNBAJO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:

For the Appellant: Mr A Otchie, instructed by J Stifford Law Solicitors
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant appeals against a decision of the First-tier Tribunal Judge Amin who dismissed her appeal against the Entry Clearance Officer's refusal dated 18h October

2016 of an entry clearance application to join her sponsor as an adult dependent relative.

2. The appeal was pursued on human rights grounds although it was argued in the application for permission to appeal that the judge in error considered the Immigration Rules. It was also submitted that the judge had erred in considering the review date of the application and had specifically erred in the assessment of human rights and whether the Article 8 was engaged. It was submitted that the reasoning was confused and the judge had not sufficiently defined the boundary between the engagement of Article 8 and whether infringement of the right was lawful and proportionate.
3. At paragraph 27 the judge found that it was not reasonable for the appellant to continue to enjoy her life in Nigeria, and yet then concludes that it was not sufficient to amount to a breach of Article 8.
4. The judge concluded there were no exceptional factors for the appellant to rely on Article 8 but failed to explain why this was so and failed to make clear findings that the relationship between the appellant and her son engaged Article 8 and failed to make clear findings of why the refusal was proportionate.
5. The judge failed to consider the age of the appellant and the care that the appellant required and failed to give adequate weight to the documentary evidence.
6. The appellant was a 71 year old woman who lived in Nigeria and lost her husband on 1st November 2015 as evidenced by the death certificate and the refusal would have a demoralising and devastating effect on her.
7. Permission to appeal was granted by First-tier Tribunal Judge Andrew on the basis that there was an arguable error as the judge found at paragraph 27 that the appellant could not reasonably be expected to enjoy her life in Nigeria but went on to find this would not be a breach of Article 8. Further the judge was unclear in the findings and failed to make any proper findings as to the appellant's circumstances and why these were not exceptional.
8. At the hearing before me Mr Otchie submitted that the findings at paragraph 27 were contradictory and insufficient and that there had been a failure to conclude the determination in a careful and effective way. For example, there seemed to be a lack of continuation or finality to paragraph 30. Mr Otchie made reference to the appellant's medical condition, that she was unwell and her eyesight problems had deteriorated. The judge had made findings regarding the Rules and had not made specific findings with regard to Article 8.
9. Mr Nath submitted that there was no error. The judge had looked at the determination and looked at the evidence in the round and that it had made sense. The evidence had been considered correctly and had set out the information. There was a balanced determination and all the points were indeed in the determination.

10. Mr Otchie submitted that there were a lack of findings although he accepted that some of the medical evidence was illegible.
11. I find that the judge properly set out the Immigration Rules and addressed the medical evidence in relation to the Immigration Rules and the appellant as a whole. There is no material error in this section of the judgment and I preserve and set out these findings. The judge recorded in the decision as follows:

9. *I have already noted above that this is a Human Rights appeal.*
10. *In considering the Human Rights application I first consider whether the Appellant has met the Immigration Rules.*
11. *The relevant Rules are contained in Paragraph EC-DR.1.1. of the Appendix FM of the Immigration Rules. This provides that the requirements to be met for entry clearance as an adult dependent relative are that:*
 - (a) *the applicant must be outside the UK;*
 - (b) *the applicant must have made a valid application for entry clearance as an adult dependent relative;*
 - (c) *the applicant must not fall for refusal under any of the grounds in Section S-EC: suitability for entry clearance; and*
 - (d) *the applicant must meet all of the requirements of Section E-ECDR: Eligibility for entry clearance as an adult dependent relative.*

E-ECDR.2.5 provides:

The application or... must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because

- (a) *it is not available and there is no person in that country who can reasonably provide it;*

or

- (b) *it is not affordable.*

12. *The Respondent has accepted in the refusal decision that the Appellant meets the financial and accommodation requirements of the rules.*
13. *The Appellant claims that she requires long term personal care to perform everyday tasks because of her old age, sight defect and body morphology aches. In support, she provided a letter from St Mary's Catholic Eye Hospital in Nigeria. The letter is dated 29 June 2016 and confirms that the Appellant presented herself to the hospital 6 years ago with complaints of blurring vision she had suffered for four months prior. A diagnosis of bilateral immature cataract was made and she was booked for pre operation assessment. She was prescribed medications and routine check-ups. The surgery was*

uneventful and she was prescribed spectacles. All other follow up appointments were uneventful with vision markedly improved.

14. *There was a further letter from dated 10 November 2016 (although the copy supplied was difficult to read). It confirmed that the Appellant has been a patient of the hospital since 2011 and had been admitted to the hospital with a history of aches and pains in her body with blurred vision in both eyes. She was being treated for her aches and pains. She had an operation in the right eye for the removal of a cataracts and a lens had been inserted on 16 February 2010. The Appellant had yet to be operated for the cataract removal on the left eye. However, due to the state of the eyes which had aggravated she needed a consistent, better an affordable and standardised treatment for corrective surgery before it comes in correctable.*
15. *This second letter was not before the decision maker and postdates the decision. However, as this is an Article 8 appeal I have had regard to all the evidence as at the date of the decision. The letter does not state that such corrective surgery is not available in Nigeria or that the Appellant cannot afford it or that it would not be up to the standard required even if available.*
16. *The Appellant claims in her grounds of appeal that her passport shows she is old; the letter from the eye clinic would not mention body aches as it was an eye specialist and she now relied on the recent letter to show that she suffers from body aches. The Appellant agrees that the time of her eye surgery her vision improved but now this has changed and she cannot afford further surgery. The Appellant claims that she has not been able to meet the follow up appointments or medications as she cannot afford this treatment. She has not been able to have the operation on her other eye as she cannot afford the cost of the treatment and she continues to experience blurred vision.*
17. *The Appellant claims that she is unable, even with the financial support of her sponsor son, to obtain the required level of care because such care is not available in Nigeria and/or is unaffordable.*
18. *The Appellant stated that she has a family life with her son and it was disproportionate to refuse her application.*
19. *I have carefully considered the Appellant's evidence and conclude that she has not shown on a balance of probabilities that the level of care that she requires for her medical condition is not available in Nigeria or not affordable even with financial support. On the contrary, as the ECO noted it is available and was accessed by the Appellant in Nigeria when she had surgery on one of her eyes to remove a cataract 6 years ago. The surgery was clearly affordable as otherwise it would not have taken place.*
20. *There is no evidence that the standard of medical care the Appellant needs is not available in Nigeria. The Appellant has not provided any evidence of financial support that she has received to show that despite that support the level of care is still not affordable or to the required level of care. The recent letter from the hospital merely repeats the words of the immigration rules but does not explain what level of care is needed or how the standard of care is inferior to the UK and why this cannot be accessed in Nigeria.*

21. *I have no evidence in the Appellant's evidence to show what financial contributions or efforts have been made to access the level of care the Appellant needs or evidence to show why it is not available other than general generic statements.*
 22. *The Appellant's son has been visiting his mother in Nigeria and he has not obtained further evidence on this issue. The Appellant has not denied that she is able to carry out daily tasks even at her age and she has clearly been able to visit the hospital recently to obtain a letter in support of this appeal.*
 23. *I have seen the photograph of a gentleman sent by the Appellant's son to show that his father has died. I do not see how this assists the Appellant in her appeal.*
12. The judge clearly found that the appellant could not fulfil the Immigration Rules as she had not shown that the personal care was not available and there was no person in that country who could reasonably provide it or it was not affordable; but as indicated this was an appeal on the basis of the human rights grounds. The Immigration Rules are relevant, however, in any Article 8 assessment on proportionality in that they set out the position of the Secretary of State (in this instance by the Entry Clearance Officer), **R (on the App of MM Lebanon) v SSHD [2017] UKSC 10**. I take these findings into account below. **Britcits v SSHD [2017] EWCA Civ 368** has upheld the adult dependent relative Immigration Rules, they are not incapable of being operated in a proportionate way and are incapable of fulfilment. The balance depends on the particular facts.
 13. I accept that in relation to Article 8 the judge may have made some contradictory findings by indicating at paragraph 27 that the appellant cannot reasonably be expected to enjoy her life in Nigeria. I suspect that this was merely a typographical error but the final assessment, as pointed out by Mr Otchie tails off so that there is no final sentence. It is also necessary to be quite clear as to findings. It is not clear whether something was missed at the close of the analysis. As such I find an error of law in the Article 8 assessment.
 14. I do not accept that there was any error by the judge in his assessment of the medical evidence in relation to the Immigration Rules and the medical evidence in relation to the appeal as it affects Article 8 and therefore I preserve the findings which I have set out above from 13 to 23.
 15. In the event that I found an error of law I elicited further evidence from the sponsor, the appellant's son. He confirmed that he last saw his mother two weeks ago and prior to that he saw her in December 2015 for the funeral of his father. When I asked him when prior to 2015 he had seen his mother he did not respond. He stated that there would be an emotional effect on his mother and he had also been to Nigeria in October 2015. He gave evidence he had a constant active relationship with his mother and he supported her "from time to time". He also stated that she received a Government pension and she lived in the father's house. He then gave evidence that he had siblings, brothers and sisters in Nigeria but they did not live close to her. It then transpired that one of his brothers worked for the state Government and the

other two were in school and all three lived in Lagos. Two sisters lived in Ogu State and both were working.

16. He gave evidence that the state of her health was impaired and would be worsened if she did not come to the UK to obtain the required standard of medical treatment.
17. Initially the witness and sponsor stated that his family and siblings lived far away from his mother but he then confirmed that in fact his mother lived in Lagos as well.
18. In order to assess whether there are any compelling circumstances and to assess all the relevant evidence further to Singh v SSHD [2015] EWCA Civ 74. I apply the five stage steps in Razgar v SSHD [2004] UKHL 27.
19. At the outset although I accept that this is a mother and son, both are adults and I am not persuaded that on the evidence, which is sparse to say the least, it has been established that the son has such a close relationship with his mother as to go beyond the normal emotional ties between a mother and a son (adult relatives) such that there is an Article 8 protected life. Britcits v SSHD [2017] EWCA Civ 368 confirms, as per Kugathas v UK [2003] EWCA 31, that blood ties and concern and affection do not by themselves presume family life and that a challenge under Article 8 can only bite where those rights are engaged.
20. The son stated that he supported his mother from time to time and indeed twice did not respond when I asked him when before 2015 he had seen his mother. He saw her twice in 2015 (from whence the application dates) and once more recently in 2017. Both mother and son are adults and have been living in different countries for some nine years, the sponsor came to the UK in 2008 according to the VAF, and his witness statement dated 21st July 2017 did not expand on his relationship with his mother. Nor did the documents written by the appellant expand on the relationship but concentrated on the need for medical care. As the son who was a witness before me emphasised he has five other siblings in Nigeria, three of whom live in Lagos. They are the children of the appellant. Initially the witness stated that these siblings did not live near the mother at all but it then transpired that that was not correct and that in fact three of them lived in Lagos. I do not accept that the sponsor was being entirely candid or that it was credible that the mother of 70 would not be in contact with her children in Nigeria particularly if they lived in Lagos. There was no indication that there was any rift between the family.
21. I therefore do not accept that there is a protected family life. However even if I am wrong about that I accept that the threshold for the level of interference is low. That said, the refusal under the Immigration Rules appears to be in accordance with the law and necessary for the protection of rights and freedoms of others through the maintenance of immigration control.
22. I turn to proportionality.
23. The appellant is in her early 70s and the medical evidence as assessed above does not suggest that the appellant is unable to access medical care or that medical facilities

are not available in Nigeria. That the standard of medical facilities is lower in Nigeria is not a reason to suggest that the appellant would not be given adequate medical assistance in Nigeria. She is clearly housed in the family home in Lagos and as the appellant told me he gives her money only from 'time to time' and she has a pension. On the evidence presented there are five other siblings in Nigeria, three of whom work and three of whom live in Lagos. I therefore conclude that there are family available to oversee and consider the circumstances of the mother and assist her where required. There was nothing to show to the contrary.

24. I have taken account of the further evidence presented to me which included medical letters of 23rd May 2017 and 25th May 2017. For human rights purposes I have taken into account the evidence before me. Section 85A(4) of the Nationality Immigration and Asylum Act 2002 has been repealed and the evidence does not appear to be excluded by Section 85(6). The letter of 23rd May from St Mary's Catholic Eye Hospital states that "*this current status of the eye is the level of care and treatment required is not available at our disposal (sic)*". There was no indication that this was not available elsewhere in Nigeria.
25. The letter of 25th May 2017 entitled the 'Lagos State Government' concluded

"However due to the state of the eye which had aggravated to the end stage cataract she needs a consistent, better, affordable and standardised treatment for corrective surgery before it becomes in-correctable and level of care and treatment required is not available here in Nigeria".
26. Not only was this letter almost illegible but it did not clearly state the specialty of the medical practitioner. Clearly it was from the Lagos University Teaching Hospital but, without more independent evidence, I do not accept that I can place credence on the conclusion that the level of treatment was not available in Nigeria.
27. The United Kingdom has no responsibility for the treatment of foreign nationals and I specifically have regard to Section 117 of the Nationality Immigration and Asylum Act 2002. There is no indication that the appellant would be financially independent in view of the suggested requirements of her medical treatment or that indeed she could speak English.
28. The appellant has clearly accessed medical treatment in Nigeria hitherto, has a level of accommodation, has her remaining family and an income in Nigeria. The sponsor stated that he had supported her from time to time and she received a pension. I conclude that the appellant wishes access to the United Kingdom for medical treatment and it is open to her to make an application for a medical visa should she wish to do so. There was overall a paucity of evidence on which to base and further clear findings but in the event I refuse the appeal on human rights grounds.
29. Further to **Huang v Secretary of State for the Home Department [2007] UKHL 11**, taking full account of all considerations, I did not consider that any family or private life of the claimant was prejudiced in a manner sufficiently serious to amount to a breach of the fundamental right protected by Article 8. I find the respondent has

shown that the immigration policy is a necessary and proportionate response to any interference in this case. I consider that the Entry Clearance Officer's refusal is proportionate.

30. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007), indicating the preserved findings, and remake the decision under section 12(2) (b) (ii) of the TCE 2007 and dismiss the appeal of the appellant.

No anonymity direction is made.

Order

Appeal dismissed.

Signed *Helen Rimington*

Signed 10th August 2017

Upper Tribunal Judge Rimington