



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

**Appeal Number: IA/28975/2015**

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**Decision & Reasons  
Promulgated**

**On June 9, 2017**

**On June 13, 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MRS ROSALINE NGOMA BABALOLA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Greer (Legal Representative)

For the Respondent: Mr McVeetie (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. I do not make an anonymity order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).
2. The appellant is a national of Nigeria. She entered this country as a visitor on April 20, 2012 and then applied for leave to remain outside of the Immigration Rules on human rights grounds. That application was refused by the respondent on November 5, 2013 and her appeal against that decision was dismissed on May 9, 2014. Permission to appeal that decision

was refused on June 11, 2014. The appellant then lodged a further application on March 25, 2015 but this was refused by the respondent on August 5, 2015. She appealed that decision on August 19, 2015 and her appeal came before Judge of the First-tier Tribunal Chambers (hereinafter called the Judge) on September 8, 2016 but her appeal was dismissed on September 22, 2016. She appealed that decision on October 5, 2016 and I found there had been an error in law following a hearing on April 27, 2017 and I adjourned the hearing to a future date when I could consider further evidence and I retained the Judge's findings at paragraphs [10] to [18] as my starting point.

3. The burden remains on the appellant to demonstrate that appropriate support from Social Services and/or the Local Authority is not available for her daughter and the mere fact the appellant may be able to provide more or better support is not the issue.
4. The appellant's solicitors filed a supplementary bundle containing two letters from the appellant's eighteen/fourteen-year-old granddaughters and various reports provided by the local authority.
5. It was agreed at the start of the hearing that no oral evidence was necessary and that ultimately this would be a proportionality assessment under article 8 ECHR.

### **THE APPELLANT'S CLAIM**

6. The appellant came here as a visitor and submitted an application to extend her stay as a carer for her daughter, [DH].
7. Her daughter is almost thirty-nine years of age and is married to [RH] who is fifty-nine years of age. Her grandchildren are aged between 4 and 18 and they all live together.
8. The appellant's daughter is under the care of a consultant psychiatrist and according to the medical evidence she can suffer a blackout at anytime. She should not be left in charge of her children and since the appellant has been here she has taken on this responsibility. The appellant, in her statement, made it clear that she is responsible for the care of everyone in the house because her son-in-law works and is not always available. Her son-in-law has his own health problems including PTSD, depression, asthma, hypertension, chronic kidney disease, arthritis, prolapsed disc, sciatica in his right leg and diabetes. He also suffers from memory and mental health problems.
9. A psychiatric report from Dr Ghosh confirms that the appellant's daughter suffers from quite severe and chronic post-traumatic stress disorder associated with Separation Anxiety Disorder. She concluded that if the appellant had to leave the United Kingdom it would lead to a significant deterioration in her mental state and she could become a serious risk to herself.

10. The appellant's daughter's doctor believed the appellant's daughter requires 24-hour supervision given the severity of her mental health issues and that the appellant's presence was therapeutic.
11. Letters from the grandchildren indicate that they attend college/school and they have little time for anything else except studies. They believed that if the appellant was not here this would impact on their own studies and ultimately affect their studies. The eldest would have to cook meals for the family if the appellant was not here and would not be able to have a social life. Their younger siblings, aged nine and four respectively, are supported by the appellant as well and without her being present they too would suffer.
12. A recent assessment carried out by the local authority makes it clear that the kind of support provided by the appellant could not be replicated by adult social care unless the appellant's daughter went into twenty-four-hour residential care. The effect of this would be to split the appellant's daughter up from her children. As the appellant is the carer if she were removed then there would be no formal carer and consequently no respite care would be available for the family.

#### **MR MCVEETIE'S SUBMISSIONS**

13. Mr McVeetie indicated that he had considerable sympathy for the appellant's family circumstances and he accepted the medical evidence presented. However, he submitted the Tribunal could not allow an appeal on sympathy grounds alone as families had to make life choices on a daily basis. The appellant did not meet the Immigration Rules and section 117B(1) of the Nationality, Immigration and Asylum 2002 makes it clear that the maintenance of immigration control, in such circumstances, is in the public interest.
14. The appellant's family had rejected the support offered because they believed the appellant could provide better support. The UK authorities has a responsibility to provide care for all UK citizens and regardless of how the appellant presented her case the fact remained that if she was not here then the authorities would step in and provide the appropriate assistance either through care in the community or by way of residential care.
15. The appellant's son-in-law has his own medical problems but these did not prevent him from working and being away from the home for several days at a time. Sometimes hard decisions had to be made which would impact on the way the family leads its life and this could include a family member giving up work to provide the appropriate care with the assistance from the local authority.
16. The appellant only came here in April 2012 but her daughter's problems pre-date her arrival and they family had to deal with the circumstances then. The family may not like what is offered by the authority but it is not

enough to say the appellant can provide a better option. Care is on offer and the report recently submitted fails to take into account that 24 hour care would be available either through residential care or by a combination of the husband and care in the community.

17. The appellant does provide support for her grandchildren but the younger children are not without support from their father.
18. The appellant lived most of her life in Nigeria and she clearly still has family in that country.
19. Taking all of the above matters into account Mr McVeetie submitted that it would not be disproportionate to refuse the appellant leave to remain outside the Rules in circumstances where she had only been granted leave to enter as a visitor and there was care available for the appellant's daughter both within the family and from the local authority and associated services.

### **MR GREER'S SUBMISSIONS**

20. Mr Greer adopted his skeleton argument and submitted it would not be proportionate to refuse the appellant's application. He submitted there were compelling circumstances as defined by Treebhawon and Others (NIAA 2002 Part 5A-compelling circumstances test) [2017] UKUT 12 (IAC) that displaced the public interest in removing the appellant.
21. He submitted that Mr McVeetie's argument was flawed because refusing this appeal would lead to increased cost to the public purse to pay for services currently provided by the appellant. The immediate consequence of the appellant being required to leave would be to force the appellant's husband to quit his employment and this would then lead to increased public resources to support this family.
22. Mr Greer referred to the decision of Lama (video recorded evidence-weight-article 8 ECHR: Nepal( (Rev 1) [2017] UKUT (IAC) which he submitted was similar to the facts of this current case. He submitted that although the appellant could be substituted by the state and other family members, in qualitative and emotional terms she was irreplaceable.
23. The medical evidence was not disputed and it is clear the appellant's daughter remains dependant on the appellant and removing her would significantly impact on her daughter's health and the lives of her grandchildren. Whilst the State can provide assistance what was on offer was not adequate. The help available would be insufficient unless her daughter went into a residential care. If care was to be provided at home then there are serious concerns regarding the daughter's wellbeing in light of what happened in 2010.
24. Mr Greer submitted that applying Section 117B of the 2002 act it would be disproportionate to remove the appellant.

## **FINDINGS**

25. The medical evidence before me is accepted and Mr McVeetie did not seek to persuade me that the appellant's daughter's medical circumstances had been exaggerated. The same could also be said of the appellant's son-in-law's medical ailments albeit it cannot be overlooked that his conditions have not prevented him continuing his employment as a freelance lecturer/tutor and trainer in law.
26. Mr McVeetie's challenge to this appeal is that whilst it may be preferable for the appellant to be allowed to stay and assist in the care of her daughter there were other options that were available including either 24/7 residential care or care provided by family members supplemented with care in the community and respite care.
27. Following the earlier hearing in April 2017 I preserved some of the original Judge's findings that can be found in paragraphs [10] to [18] of his decision. These findings can be summarised as follows:
  - (a) The family believe it is necessary for the appellant to be the full-time carer of her daughter.
  - (b) The respondent's carers policy (pages 67 to 88 of the original bundle) is that the community policy is not designed to enable people to stay in the United Kingdom who would otherwise not have leave to do so. Leave should only be granted where it is warranted by particularly compelling and compassionate circumstances. Each case must be looked at on its own merit having regard to the type of illness/condition, type of care required, the level of care available and the long-term prognosis. Local authorities are under a duty to arrange suitable care.
  - (c) The appellant and her family had declined all help from the local authority since the appellant had been here although they had accepted the care and assistance of the local authority before the appellant came here in 2012.
28. Since that hearing the appellant has provided further evidence on the level of care available both before the appellant arrived and more recently. These reports are contained in the supplemental bundle between pages 9 and 58.
29. The report at pages 9-17 is an assessment into the appellant commenced on July 13, 2016 and completed on August 3, 2016 (see page 15). The appellant made clear to the person interviewing her that she was perfectly capable of looking after her daughter and would not welcome any interference from outside the home. The report states that the appellant provides a high level of oversight and practical assistance to her family including providing her daughter with personal care, meals, emotional support and support in terms of unpredictable blackouts. The report itself

does not discuss what alternatives would be available if the appellant was not present. The report confirms what was already known namely, needs were identified but support was declined.

30. The report at pages 18-39 is an assessment into the appellant's daughter undertaken at the same time as the previous assessment (see page 37) although it seems that this plan was completed more recently on June 8, 2017 (see page 33). The subject had considered formal care and support but did not feel that this would meet her needs and those of her children. She was not keen on strangers in her home and did not feel this was fair on her children. She stated her husband could not provide the necessary care as he often worked away from the home for several days at a time. It was not felt that the services which adult social care could provide in the home would replicate the support the appellant was providing. Formal services in the home do not require 24 hour care at home although 24 hour care could be provided within a residential setting but this was felt by the author of the report inappropriate given the needs of the children and the whole family's right to have family life. Without the support of the appellant then the son-in-law's employment would be compromised. A needs, risk and contingency plan (pages 28 to 32) confirms that social care would be available to:
  - (a) Manage and maintain nutrition.
  - (b) Maintain personal hygiene.
  - (c) Ensure the appellant's daughter was appropriately dressed.
  - (d) She would be able to be in the house safely. She would be able to wear a personal pendant alarm to summon help.
  - (e) Make use of necessary facilities or services in the local community.
31. The report contained at pages 40-53 are dated (March 2010) and relate to a period when the appellant was not in this country. This was an initial assessment after the appellant's daughter tried to commit suicide. The assessments related to the two eldest grandchildren. No role was deemed necessary for the family at the time albeit there were concerns over the eldest grandchild's emotional well-being. The appellant's son-in-law was assessed as a very supportive father and husband and whilst both he and his wife were suffering from mental health issues they were seeking to address these issues.
32. It is against this background that I have to consider the appellant's appeal outside of the Immigration Rules.
33. The two arguments presented are as follows:
  - (a) Mr McVeetie submits there are solutions available within the community and whilst the family may feel it is preferable for the

appellant to remain it was not necessary and removal was proportionate because the state can provide the necessary support.

- (b) Mr Greer submitted that the options available within the community did not address the individual problems facing this family and there are particularly compelling and compassionate circumstances that mean it would be disproportionate to refuse this appeal.
34. If an appellant cannot meet the Immigration Rules that permit entry clearance or the right to remain, the appellant must rely on article 8 ECHR.
35. The correct approach in such cases was set out by the House of Lords in Razgar [2004] UKHL 00027. The Court set out a five-stage test and I make it clear that the requirements to be met in the first four stages are met and the relevant issue for me is the final stage namely whether it would be disproportionate to require the appellant to leave the country.
36. Following the introduction of the Immigration Act 2014 I must have regard to section 19 of that Act which introduced Section 117A-D into the 2002 Act. This particular case involves Section 117B. Applying that section I find as follows:
- (a) The maintenance of effective immigration controls is in the public interest.
- (b) The appellant speaks English and is not in receipt of public funds. She is supported by her son-in-law who works and is not a burden on the UK tax payer. Case law makes clear that at best this is a neutral factor.
- (c) Whilst she has a relationship with her grandchildren this is not a relationship covered by section 117B(6) as her grandchildren live with their parents.
- (d) The appellant has not specifically argued a private life in this appeal but clearly any private life created has been created whilst her immigration status was precarious and since her last appeal was refused she has been here unlawfully.
37. There is absolutely no doubt that the appellant's daughter has a number of medical problems. These are set out above and in more detail in the bundle of documents before me. Mr McVeetie recognised those problems but argued that the appellant has failed to demonstrate her daughter could not receive the appropriate assistance, not necessarily the same assistance, from the authorities.
38. The reports in the supplemental bundle reiterate the fact the family do not want to take advantage of such help. The respondent's carer's policy makes it clear that this is something I must have regard to albeit I must take into account the type of illness/condition, type of care required, the level of care available and the long-term prognosis. The author of the

recent care assessment notes that there are alternatives available but they would have repercussions for the family.

39. The appellant's daughter prior to 2012 was unable to rely on her mother as she lived in Nigeria. With the exception of an incident in 2010 they got by. Clearly having a family member on hand to look after you 24/7 is more desirable to having a stranger to do that task. I was told the son-in-law was not capable of carrying this responsibility because firstly he has his own problems and secondly if he did he would have to give up work. The fact he is able to work away from home suggests his problems would not prevent him providing assistance supported by others. He is able to continue to work away from home because the appellant has taken over his daily duties. The report from 2010 made clear that both he and his wife were bringing up their children and he in particular was described as a "very supportive father and husband".
40. Mr Greer's submission is that removing the appellant would mean the husband giving up work and all that would bring with it including the additional costs to our stretched NHS services.
41. Mr Greer referred me to the decision in Treebhawon but this is to do with private life claims. The facts of that case centre around a mother and father and their children. This case involves the relationship of a mother to an adult daughter and her relationship to her grandchildren. The grandchildren's best interests are to remain with their parents and any decision to remove the appellant would not alter that.
42. I have to consider whether the arguments put forward by the appellant overcome the threshold necessary to demonstrate a disproportionate interference with private life rights under Article 8 ECHR.
43. Section 55 of the Borders, Citizenship and Immigration Act 2009 gives primacy to the best interests of the grandchildren who are under the age of eighteen. The best interests of these grandchildren will primarily be served by the maintenance of the family unit and as stated above this will not be disturbed even if the appellant were to leave the country.
44. I have noted the content of the two letters and the reports from 2010. What is sadly lacking in this appeal is an examination of what exactly would be provided by the authorities if the appellant were unable to provide the assistance she does. The appellant has approached this appeal and the previous appeal on the basis they would not accept outside help. That does not assist her case. Despite the problems that existed prior to 2012 it seems the family survived albeit with outside assistance. In an ideal world people would be allowed to choose how they lived their lives and that remains possible as long as the appellant satisfies the Immigration Rules. As she does not she must rely on a proportionality assessment under article 8 ECHR.



45. Mr Greer urged me to have regard to the decision of Lama and submitted the facts were similar. The appellant in this current appeal came on a six month visa and overstayed. She lost her first appeal to stay and this is her second attempt. She does not have a highly developed private life. Her private and family life merge as that is the only life she has. She presents herself as a carer for her daughter and grandchildren but does not meet the Rules. Her role is not indispensable because her daughter can turn to her husband, the authorities and to a much lesser extent her eldest child. To suggest the appellant cannot be substituted is incorrect.
46. The appellant came as a visitor on April 20, 2012 with entry clearance until September 13, 2012 and then applied on September 12, 2012 for leave to remain outside of the Immigration Rules on human rights grounds. That application was refused and an appeal dismissed on May 9, 2014. She has been an overstayer since her appeal rights were exhausted and has been here both unlawfully and precariously.
47. There are no doubt strong arguments advanced in this appeal but I am not persuaded the belated enquiries made in this case by the appellant are sufficient to show that the removal would not be proportionate. There remain many options within the community available in this case. None of those options appear unreasonable albeit the consequence means the appellant would have to return to Nigeria where she has family.
48. Balancing the facts of this case against the public interest in play I find that the respondent's refusal to grant the appellant status does not interfere with the appellant's right to private/family life.

### **DECISION**

49. There was an error in law in that no article 8 decision was made. I have remade the decision and
50. I dismiss the appellant's appeal under article 8 ECHR

Signed

Date June 12, 2017

Deputy Upper Tribunal Judge Alis

FEE AWARD

TO THE RESPONDENT

I make no fee award as I have dismissed the appeal

Signed

Date

June 12, 2017

Deputy Upper Tribunal Judge Alis