



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

Appeal Number: UI-2021-001685
(HU/00061/2021)

THE IMMIGRATION ACTS

**At: Manchester Civil Justice Centre
On: 30th August 2022**

**Decision & Reasons Promulgated
On: 6th October 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**Elisabeth Adefunke Kefas
(no anonymity direction made)**

Appellant

and

Entry Clearance Officer, Abuja

Respondent

For the Appellant: Dr E. Mynott, Latitude Law

For the Respondent: Mr A. Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Nigeria born in 1957. She appeals with permission against the decision of the First-tier Tribunal (Judge Jarvis) to dismiss her human rights appeal.
2. On the 2nd October 2020 the Appellant applied for leave to enter as the adult dependent relative of her daughter, Ms Waken Kefas, a person present and settled in the UK. This was refused on the 1st December 2020 on the grounds that the Appellant had not demonstrated that she required long term personal care, or that if she

did she could not obtain the care required by paying for it in Nigeria. In a decision dated the 7th September 2021 the First-tier Tribunal agreed and the Appellant's appeal on human rights grounds was dismissed.

3. The Appellant was granted permission to appeal to the Upper Tribunal on the 27th October 2021 by First-tier Tribunal Judge Komorowski.

Ground (i): Misdirection

4. The Tribunal began its deliberations by considering the evidence about the Appellant's health. It accepted the medical evidence that she was suffering from high blood pressure and osteoarthritis and that this left her in pain in her hip and knees and unable to perform basic self-care tasks like she once could; for instance she only now takes a bath without assistance once a week because she finds it difficult to get in and out. The Tribunal nevertheless concluded that this was insufficient to meet the requirement at E-ECDR.2.4 of Appendix FM that the applicant "must as a result of age, illness or disability require long-term personal care to perform everyday tasks".
5. The grounds contend that this conclusion could not be logically drawn from the findings that the Tribunal itself makes. If the Appellant is in constant pain as she does things on her own – getting around her home, having a bath, getting to the shops etc, and that pain would be alleviated if she had assistance from a carer, it must be accepted that the rules are met. The threshold to be met by applicants under this category is demanding, but it cannot be read to be so demanding that people are expected to just live in constant pain. Further it is submitted that the Tribunal erred in factoring into its assessment of this test the fact that the Appellant has ad hoc assistance from a neighbour: this was not relevant to the question of whether, as a matter of fact, this is an individual who needs long term personal care.
6. Mr Tan submitted that there was no difficulty in the Tribunal having accepted that the Appellant is unwell, but also reaching the conclusion that she had not yet reached the point where she *required* personal care to perform every day tasks. The rule introduces a demanding standard. It does not mean "would prefer" personal care, or that personal care "would make life easier". The Judge gave a clear and rational explanation why he did not think that test met.
7. I agree that as a matter of principle, the term "must require" should not be read as such a demanding test that a person who could just about manage alone would necessarily fail to meet it, no matter how great their suffering. That is not however the situation with which

this Appellant is faced. The Sponsor sought to portray her mother as living through constant pain and unable to do anything alone – the Tribunal expressly rejects that evidence as exaggeration. The evidence in fact reveals that she lives in her apartment without daily assistance, continues to go out, and is able to bathe herself, albeit that once a week a neighbour offers her some assistance in this respect. The Judge was entitled to conclude from these findings that the Appellant does not yet require long term personal care.

Ground (ii) - Taking immaterial matters into account

8. The grounds here take issue with the fact that the Tribunal weighed in the balance the evidence given in letter form by the security guard on the Appellant's gated compound, Mr Abdul Kudus, who is also acting as her driver. In particular it is submitted that it was irrational for the Tribunal to apparently place more weight on this evidence than that of Dr Agboola, who had been the Appellant's doctor for 5 years: the context being that Mr Kudus made no mention of the Appellant needing care, and Dr Agboola did.
9. I am not satisfied that the written grounds accurately reflect the First-tier Tribunal's reasoning. It was not a matter of it preferring Mr Kudus' evidence over than of Dr Agboola. What the Tribunal in fact does it to conduct a rounded assessment of all of the evidence.
10. Dr Agboola writes, in several letters summarised by the Tribunal between its paragraphs 13-19, what the Appellant's conditions are, and what she has reported to him about how these conditions impact on her life. The Tribunal has no doubts at all about the former, accepting that the Appellant does indeed have osteoarthritis and high blood pressure; it is the latter feature of Dr Agboola's evidence, in essence the Appellant's own self reporting, that the Tribunal has cause to doubt.
11. The Appellant had told Dr Agboola that she is unable to carry out day-to-day activities such as bathing, cleaning, cooking and even socialising. Yet her own letter described taking a bath twice per week, and it was clear from other evidence that only one of these was with assistance (of a neighbour). The Sponsor explained that Mr Kudus did not enter the Appellant's apartment, rather he helped her from the door to the car, raising the inference that the Appellant is moving around within the apartment on her own. She had told Mr Kudus that she finds it difficult to do chores around the house, raising the inference that she is in fact still doing them, albeit that this is challenging. This led the Tribunal to the conclusion that the Appellant is still able to undertake daily tasks alone.

12. Dr Agboola's evidence that the Appellant had told him that she was unable to socialise was amplified by the Sponsor who claimed in a witness statement that her mother had been unable to attend church for "several years" because of her conditions: the Respondent had put it to the Sponsor that this could not be true, because print outs of text messages between her and her mother in March 2020 made reference to her going to church. The Sponsor had then changed her evidence to say that she had made a mistake, and that actually her mother had stopped going to church just after that message, towards the end of March 2020. As the Tribunal observed, it is more likely that this would have been because of the Covid-19 lockdown imposed at that time rather than the Appellant's conditions. The Tribunal concluded that the Sponsor had deliberately sought to exaggerate the impact of her mother's conditions. That this was so was further illustrated by the recent letter from Mr Kudus confirming that one of the places he takes the Appellant is to church. The text messages highlighted by the Respondent also make reference to the Appellant going to market two days in a row. Having had regard to all of this evidence Judge Jarvis concludes: "I do not therefore accept the evidence that the Appellant does not go out because of her arthritis and is, in effect, completely socially isolated because of her conditions".
13. As I note in respect of ground (i), the evidence in this case certainly indicated that the Appellant was suffering from medical conditions, and that these presented her with some difficulties, but the Tribunal concluded that these difficulties were not yet such that it could be said that she *required* long term personal care. The claim that she did was rejected as exaggeration for the reasons that the Tribunal gave. There is no error in any of that.

Ground (iii): Findings not supported by the evidence

14. Two particulars are pleaded under this heading.
15. First, the Judge found that "significantly, there is no up-to-date statement from the Sponsor". The grounds contend that this is not true. The Sponsor gave oral evidence at the hearing. The Sponsor provided a witness statement with the initial application and an updated statement in the Appellant's Bundle. I am satisfied that the Tribunal was mistaken to say there was no updated statement. Nothing however turns on that. As Dr Mynott accepted in his submissions, the contents of that statement, and all of the Sponsor's evidence, are expressly reflected in the decision.
16. The second issue is of more significance. The Appellant had provided a good deal of background evidence reporting on the issue of 'elder abuse' perpetrated by carers. Judge Jarvis had not found this

helpful in addressing the question he had to answer, namely whether appropriate care could be paid for by the Appellant in Nigeria. Although he acknowledged that some of that evidence was specifically directed at the issue of elder abuse in Nigeria, he found it to talk in “extremely broad terms”. He therefore attached minimal weight to it.

17. The Appellant contends that it is wrong as a matter of fact to say that this evidence was extremely broad. Page 203 of the Appellant’s bundle confirms that the World Health Organisation believes Nigeria to be one of the countries with the highest prevalence of elder abuse in the world. The grounds of appeal summarise an article in the American International Journal of Contemporary Research (page 189 of the bundle) as confirming:

- a. 1 in 7 incidents of elder abuse is physical
- b. 36% of nursing staff report witnessing elder abuse
- c. 10% of nursing staff admitted inflicting elder abuse
- d. 40% of nursing staff admitted psychologically abusing their patients by restraining them or depriving them of dignity and choice
- e. A study in Akwa Ibom State found:
 - i. 46.7% of respondents complained of medical neglect
 - ii. 49% of uncomfortable living conditions
 - iii. 35% of theft
- f. A study of the elderly in Lagos found complaints of medical neglect
- g. A study in Enugu State reported moderate prevalence of inadequate food but 88% reported denial of freedom and 73% verbal abuse.
- h. Women are abused more than men
- i. A study in Ado-Ekiti reported 58% of elders had experienced abuse:
 - i. 60.9% neglect
 - ii. 41.6% financial
 - iii. 37.2% physical
 - iv. 32.1% sexual

18. Other articles confirmed that abuse in care homes and facilities is prevalent. The grounds contend that these studies established a 'real risk' that the Appellant would be subjected to elder abuse in Nigeria if her daughter engaged a paid carer, and that the Tribunal erred as a matter of fact when it dismissed this material as general background.
19. In considering this ground I have looked at the evidence myself. Having done so I accept that statistics reflected in the research are shocking, but I agree with the First-tier Tribunal that they fall far short of establishing that *this* Appellant would face elder abuse or could not pay for appropriate care in her home.
20. The first difficulty with the evidence presented is that it is, as Judge Jarvis finds, broad. Statistics cited derive from as far and wide as the USA and Bangladesh; anecdotal evidence mentioned relates to Ghana or West Africa in general.
21. The second difficulty is that even where the evidence is specifically concerned with the situation in Nigeria, it is not at all clear from the evidence presented whether it is in any way applicable to the situation of this Appellant. The articles variously refer to abuse by spouses, by other family members, and to carers in circumstances where the elderly person is unable to speak up, or where they are estranged from their children. The point is illustrated by the abstract of the article in the American International Journal of Contemporary Research:

Elderly people are abused and neglected both physically and psychologically by family members and other care givers. Some of them have challenges of poverty and diseases of old age such as stroke, depression, dementia, Alzheimer's and Parkinson's. Because of their frailty, they depend on their families and other caregivers for care and in the process are abused. Also in the absence of institutional care, adult children who are too busy to take care of their parents hire caregivers who also maltreat them. Unfortunately, the elderly are unable to challenge their abusers and have no way of reporting their abuse and so many suffer in silence. Nigeria has the largest number of elderly people over 60 years of age, South of the Sahara, yet there is very little put in place by the government by way of institutional policies and legislation or even implementation of the Madrid Plan of Action on Aging, to which it is a signatory. For now, families continue to bear the burden of caring for their elderly members but this is increasingly difficult for them. Some elderly members live in destitution and are left at the mercy of the public or good Samaritans. The literature review indicates there is a high prevalence of elder abuse in Nigeria in spite of the respect that the aged command. The paper highlights the difficulties elderly people face in Nigeria.

22. This Appellant does not have dementia or any other condition which affects her ability to communicate. She has a daughter who is very obviously concerned for her welfare and in a position to pay for good care. The evidence already indicates that the Sponsor has contacts in the neighbourhood, for instance Mr Kudus and the neighbour who already assists her mother, who could be asked to keep an eye on her, for financial reward if necessary. If the Appellant had any concerns about the care she was receiving, she could immediately report it to her daughter, with whom she is in constant touch by telephone and text message. This while the evidence submitted undoubtedly provides examples of elderly Nigerians being subject to poor care or abuse, it is not immediately obvious that this Appellant might be a victim of that herself. That leads me to a further difficulty with this aspect of the case: the fact that neither the Sponsor nor the Appellant have made any attempt to engage a paid carer to assist the Appellant in her own home. As such it is very difficult to see why they believe that they are “unable” to obtain the required level of care.
23. At its highest the academic evidence relied upon showed was that the Appellant and her family would have to do a very thorough job vetting and checking on any prospective carers. It is no doubt the case that a similar study in the UK would find many elderly people who have experienced neglect, inadequate food, and uncomfortable living conditions, but that sad fact could not properly lead to the conclusion that elderly people in the UK are as a general matter “unable” to find and pay for the required level of care.

Anonymity

24. There was no application for an anonymity order. I have had regard to the Presidential Guidance Note 2022 No 2: *Anonymity Orders and Hearings in Private* and am satisfied that there is not good reason in this case to override the presumption in favour of open justice, so make no order.

Decision and Directions

25. The decision of the First-tier Tribunal is upheld.
26. There is an order for anonymity.

Upper Tribunal Judge Bruce
30th August 2022

