



**Upper Tribunal
(Immigration and Asylum Chamber)
003811**

Appeal Number: UI-2022-

(HU/53507/2021); IA/12351/2021

THE IMMIGRATION ACTS

Heard at Field House

On 9 January 2023

**Decision & Reasons
Promulgated**

On 19 February 2023

Before

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY
UPPER TRIBUNAL JUDGE SHERIDAN**

Between

**MS BENEDICTA NSE EKAETE IBANGA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Solomon of counsel

For the Respondent: Ms Nolan, a Senior Home Office presenting officer

DECISION AND REASONS

Introduction and background

1. The appellant appeals against the decision of First-tier Tribunal Judge Lucas (the judge) to dismiss her appeal against the respondent's refusal of leave to remain in the UK on 2 July 2021.

2. The appellant, who is a citizen of Nigeria, arrived in the UK on 3 November 2019 with a multi-visit visa. That was originally due to expire on 3 May 2020. She applied on 30 July 2020 for leave to remain based on her relationship with Matthew Odle, a British citizen. However, due to the onset of the coronavirus disease, the appellant's original leave was automatically extended on 31 August 2020. On 2 July 2021 her application for leave to remain was refused because she did not qualify under the 10-year partner route. The respondent cited in her refusal R - LTRP.1.1 (a), (b) and (d) of Appendix FM of the Immigration Rules.
3. On 6 July 2022 the appellant's appeal against the refusal to grant her leave to remain came before the FTT for an attended hearing. The judge considered the appeal both within the framework of the Immigration Rules and article 8 of the European Convention on Human Rights (ECHR). He dismissed her appeal, noting that the appellant's private and family life in the UK was "flimsy", that there were no very significant obstacles to her return to Nigeria, where she had a family and support network, and nothing to prevent her return to the UK for a further visit to her partner or for settlement should she meet the relevant criteria.
4. The appellant's case was that he claimed to have formed a family life with Mr Odle and a private life with a supportive network of friends and family including a maternal uncle who was like a father to her. The appellant and Mr Odle had intended to marry but that they have been unable to for the reasons stated above. She lives with the uncle and he provides a supportive environment for her which would be threatened by her return to Nigeria. She also claims that she receives emotional as well as material support from the relationships she has formed in the UK which would have consequences "of gravity" to her including her moral integrity and right to a safe environment. The appellant feared that if she returned to Nigeria she would not be able to return to the UK as Mr Odle's partner as she was not living with him in the UK. It was her case that the requirement that she re-locate to Nigeria was disproportionate, where she did not have a sufficient support network. She was a vulnerable individual, having been the victim of domestic violence in Nigeria and she feared that her "fragile" mental health may deteriorate if she were required to return there. Her return to that country did not serve any legitimate aim and was not in the public interest.
5. F T T Judge Oxlade gave permission to appeal, specifically on grounds 1 - 3, although he specified that all grounds could be argued. The grounds appear to be, with respect to Mr Soloman, of excessive length. However, in summary it is stated that:

- (i) The grounds allege that there is a lack of adequate finding on material matters such as the credibility of the appellant, her witnesses and other evidence including;
- (ii) Additionally it is said that the judge failed to make material findings on the insurmountable obstacles which would present themselves to the family life with the appellant's partner continuing in Nigeria and the judge may have set too high a threshold;
- (iii) There was a lack of assessment of the relationship between the appellant and her partner notwithstanding that they had not cohabited. A broad evaluation of their relationship was called for but had not been undertaken;
- (iv) The appellant's partner suffered from poor health which had not been properly appraised by the judge. A large number of documents had been provided which ought to have been considered and weighed in the balance;
- (v) The appellant also had psychological ill-health arising from her ill-treatment by her former partner. She was a victim of domestic violence and abuse which undermined the judge's conclusion that there were family members, such as her mother, to whom she could turn;
- (vi) The judge is also criticised for failing to make a proper evaluation of the appellant's reliance on her uncle which was material to her private life in the UK;
- (vii) The judge was criticised for not accepting the psychologist's report, indicating that it was as a result of the appellant's own testimony that he rejected its conclusions. In fact the judge ought to have found that the psychologist's evidence corroborated her account of having been subject to a domestic and sexual abuse in Nigeria;
- (viii) In addition, the judge is said not to have engaged with the background country information referred to in the skeleton argument and appeal bundle including the CPIN on medical and healthcare issues in Nigeria. These documents supported the appellant's claim that the level of healthcare provision in Nigeria was inadequate for her needs;
- (ix) The judge is further criticised for inadequately considering article 8 of the ECHR outside the Immigration Rules and failing to take into account a number of factors weighing in the appellant's favour. There was no proper proportionality assessment and an inadequate account was taken of a number of the matters raised above as part of that assessment;
- (x) Finally, it was said that the judge failed to engage with the appellant's argument relying on the principle in the case of

Chikwamba [2008] UKHL 40. It was by no means certain that the appellant would be granted entry clearance to re-join her partner and therefore severe disruption would occur to her family life with the sponsor. This was disproportionate and therefore unnecessary.

6. There is essentially a great deal of repetition in the above grounds which will later be considered in greater depth.

The hearing

7. Before the Upper Tribunal none of the 10 grounds of appeal summarised above were abandoned but not all were subject to detailed argument.
8. Mr Soloman began by providing an overview. He said that there were material errors in the decision of the FTT. A number of witnesses gave evidence. The appellant's partner gave a statement but not oral evidence. There were 4 witnesses of importance. Despite this evidence, the judge failed to make findings on credit. He decided the case based on the absence of evidence to support certain parts of the appellant's case. The principal error related to the lack of reasons and discounting the psychologist's report. He said the main points were:
 - (i) It was incumbent on the judge to deal with issues of credit, which were found to be probative of the claim. No adequate reasons were given for rejecting the claim. Clearer findings were needed, for example, in relation to her alleged reliance on her uncle (see paragraph 43 et seq of the decision);
 - (ii) Very significant obstacles were required before the appellant would be able to succeed on his claim under the ECHR. Based on history of abuse, it was argued, very significant obstacles to her safe return to Nigeria could be shown here;
 - (iii) There had been a failure to make material findings on proportionality. The judge referred to the appellant's mental health but pointed out that a high threshold was required to sustain a claim based on health grounds and there had to be "exceptionality" (at paragraph 54 of his decision). However, the fact that there was no cohabitation between the appellant and the sponsor here did not mean that no evaluation assessment was required. Here, having carried out that assessment, the judge concluded that there was a genuine and subsisting relationship between the appellant and the sponsor but concluded that the sponsor's poor health was insufficient reason to find very significant obstacles to the appellant's return to Nigeria. This again was an error based on the evidence before him;

- (iv) The judge paid no adequate regard to letters of friends and family which supported the close relationship between the appellant and the sponsor;
 - (v) Other factors were the poor health of the sponsor, which had also not been properly dealt with in the decision, although reference was made to it. It was argued that this itself would represent a significant obstacle to the appellant's safe return to Nigeria.
9. Mr Soloman then went on to make further submissions in relation to a number of specific grounds:
- (i) Ground 5 related to the appellant's traumatic experiences in Nigeria and domestic abuse. It was claimed she suffered various sequelae consequent upon that past abuse. This would lead to psychological problems on return, including poor mental health. Inadequate reasons had been given for rejecting this aspect of the claim. Connected with this was the appellant's poor relationship with her mother. The judge also failed to make a clear finding in relation to the appellant's relationship with her uncle at para 49, where he is referred to. No adequate account is taken of these family relationships;
 - (ii) Ground 7 criticised the judge for rejecting the psychologist's report. It was submitted that the judge ought to have concluded that if the appellant were to return to Nigeria her delicate mental health could suffer a relapse;
 - (iii) Ground 8 related to the failure of the judge to engage in the evidence of a lack of medical treatment being available in Nigeria;
 - (iv) Ground 9 suggested that there was a failure to take account of article 8 outside the rules. A proper conclusion as to proportionality was required but was absent from the decision as it is.
 - (v) Ground 10 related to "the **Chikwamba** point". Essentially, the appellant would be able to return to Nigeria and make a fresh application for entry clearance based on her relationship with the sponsor but, it was submitted, it was unnecessary and inappropriate for her to have to do so.
10. Overall, there was a failure to embark on the balancing exercise that was required in this type of appeal and were such balancing exercise undertaken there is a reasonable prospect that the appellant's appeal would have succeeded.

Discussion

11. The appellant had been in the UK for a limited period, did not qualify under the Immigration Rules and had only formed a

relationship here since 2019. The conclusion the FTT reached was unsurprising in the circumstances but what of the reasons that led the judge to that conclusion?

12. The Judge's reasons were brief, but he correctly made an assessment of the extent of the appellant's private and family life in the UK and concluded that both existed. The judge then weighed the quality of the appellant's private and family life in the UK against the public interest in enforcing immigration control. In our view he did so in a manner which was not outside the correct legal parameters.
13. The conclusion that the appellant must have had ties in Nigeria prior to her arrival here in late 2019 was plainly one open to the judge. She still had her mother living there and it was proper for him to conclude that a support network could be re-established and that there were no very significant obstacles to doing so.
14. The sponsor's state of health was insufficiently grave to require live-in help and the appellant's evidence was to the effect that she was not his primary carer. Even if it were the case that the appellant was his primary carer, the judge was entitled to be skeptical about the suggestion that there was a lack of care available for him if she returned to Nigeria. As the judge said, the sponsor appears to have coped prior to her arrival here.
15. The appellant's reliance on **Chikwamba** was misconceived as this is not a case where the respondent refused the application on the narrow procedural ground that the appellant should be required to apply for entry clearance from abroad (see **Alam & Anor v Secretary of State for the Home Department [2023] EWCA Civ 30**). The appellant argued that the need to return to Nigeria and apply for entry clearance was severely disruptive to her family life here. The judge did not, however, accept that this was so, pointing out that the continuance of the relationships formed in the UK was not necessarily dependent on the appellant's presence in the UK and that the need to respect the requirements of the Immigration Rules clearly needed to be properly taken into account. The latter justified the requirement that the appellant should return to Nigeria and make any immigration applications from there. This in our view was a conclusion open to him on the evidence.

Conclusion


16. The grounds fail to identify an error of law. However, any error by the judge would in any event not have been material given that the conclusion he came to, was plainly one that any tribunal would have come to having regard to the appellant's short stay in the UK and lack of significant family life other than a relatively short relationship with a man she does not live with. The decision was in

any event justified by the need to maintain respect for the Immigration Rules.

Notice of Decision

The appeal against the FTT's decision is dismissed.

No anonymity direction is made.

Signed 
Deputy Upper Tribunal Judge Hanbury

Date 23 January 2023