



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Cases: UI-2021-001800  
UI-2021-001799

First-tier Tribunal: HU/04029/2020  
HU/04031/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

26<sup>th</sup> February 2024

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL**

**Between**

**ISRAEL OLUWATOSIN DAGUNDURO  
OLAIDE MODUPE DAGUNDURO  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Corben, instructed by Colin Wales Solicitors  
For the Respondent: Ms S Lecointe, Senior Presenting Officer

**Heard at Field House on 21 December 2023**

**DECISION AND REASONS**

1. I issued my first decision in these appeals on 21 September 2023. I found that the First-tier Tribunal (Judge Wood) had erred in law in dismissing the appellants' appeals. I set that decision aside in part, preserving the finding that paragraph 276ADE(1)(vi) of the Immigration Rules was not met, and ordered that the decision on the appeals would be remade in the Upper Tribunal following a further hearing. That hearing took place before me on 21 December 2023. I am grateful to Mr Corben and Ms Lecointe for their submissions and I apologise for the delay in finalising this decision.

**Background**

2. The appellants are Nigerian nationals who were born on 26 November 1980 and 9 March 1982 respectively. They are husband and wife, having married in Ibadan, Nigeria, on 15 January 2008.
3. The first appellant entered the United Kingdom on 13 February 2013. He held entry clearance as a Minister of Religion, valid from 6 February 2012 to 6 February 2015. Further leave to remain in the same capacity was subsequently granted from 3 February 2015 to 28 February 2018.
4. The first appellant's leave was curtailed so as to expire on 15 August 2017 because his sponsor had ceased to have a licence. He sought administrative review of that decision but it was maintained on 9 June 2017.
5. The first appellant made another application for leave as a Minister of Religion on 11 August 2017 but that application was refused on 24 November 2017. Applications for administrative review and judicial review of that decision were both unsuccessful.
6. The first appellant made his final application for leave to remain as a Minister of Religion on 28 August 2019. That was also refused, and a further application for administrative review was refused on 21 January 2020.
7. The second appellant first entered the United Kingdom as a student. She held leave to enter and then leave to remain in that capacity from September 2009 to January 2013. On 30 November 2013, however, she re-entered the United Kingdom as her husband's dependant and her immigration status has been dependent upon his since then.
8. On 4 February 2020, the appellants applied for leave to remain on Article 8 ECHR grounds. The applications were accompanied by a letter from their former solicitors dated 8 February 2020. Much of that letter was pro forma but it did state that the appellants had relatives in the United Kingdom, including the second appellant's parents and 'numerous siblings'. It was said that the appellants had been living and working in the UK for seven years and that they had formed family and private lives in this country. It was submitted that it would be disproportionate to remove them to Nigeria.
9. The applications were refused by letter dated 25 February 2020. The respondent did not accept that the appellants had any claim under Appendix FM of the Immigration Rules. As to paragraph 276ADE(1)(vi), the respondent noted that the appellants had lived in Nigeria for the majority of their lives and that they spoke English and Yoruba. It was not accepted that there would be very significant obstacles to their re-integration. The limited information provided in support of the application was not accepted to establish a family life in the UK and it was considered to be proportionate to interfere with any private life they had established.
10. The appellants appealed to the First-tier Tribunal and their appeals were dismissed by Judge Wood on 7 September 2021. An appeal against that decision was dismissed by an Upper Tribunal Judge on 30 January 2023 but the judge subsequently accepted that her decision was marred by procedural irregularity. She therefore set aside that decision and directed that the appeal be reheard by another judge of the Upper Tribunal. It was as a result of that order that I reheard

the appeal and found, in the decision to which I have already referred, that Judge Wood's decision to dismiss the appeal on Article 8 ECHR grounds could not stand.

11. At the start of the resumed hearing, Ms Lecointe helpfully confirmed that the respondent did not intend to adduce any evidence beyond the bundle which had been filed for the hearing before the FtT. Mr Corben helpfully confirmed that he intended to refer to the two bundles which had been before the FtT: one of 94 pages and one of 23 pages. Ms Lecointe said that she had neither of these bundles. Although she was unable to explain why that was so, I put the matter back so that she had time to consider the papers.
12. Ms Lecointe having confirmed that she was ready to proceed, I heard oral evidence from the appellants. I do not propose to rehearse their oral evidence in this decision. I will refer to it insofar as it is necessary to do so to explain my conclusions.

### **Submissions**

13. Ms Lecointe submitted that matters had moved on since the refusal letter but she invited me to take that document into account. The first question was whether there was a protected family life between the appellants and the second appellant's parents. That required an assessment of whether there were beyond normal emotional ties. Ms Lecointe submitted that there were not, although she accepted that the second appellant's mother is very ill and requires 'a lot' of care. The fact remained, however, that there had been insufficient exploration of the support which might be provided by social services in the absence of the appellants. The second appellant had explained in her oral evidence that no additional support had been offered because of her own training and ability to support her mother.
14. Ms Lecointe had not read the respondent's policy on carers despite my reference to it in my first decision. She suggested that there were no relevant public interest considerations in section 117B of the Nationality, Immigration and Asylum Act 2002 because neither of the appellants was a foreign criminal. I said to Mr Corben that I would need to hear from him on the policy and that the latter concession was self-evidently wrong as a matter of law. He was content to address me on those matters despite what had been said by Ms Lecointe.
15. Mr Corben submitted that this was a 'plain case of family life'. I said that I would accept that submission and that I need not trouble him about it any further. The real question was proportionality, to which Mr Corben then turned.
16. He submitted that there was a lacuna in the Immigration Rules. There was clear provision for Adult Dependent Relatives to be brought to the UK for care but there was no corresponding provision for settled persons who were in need of care from foreign nationals. There had been no emergency as such, and the situation in this case was not covered by the Carer's Concession or policy. The second appellant's mother had fallen ill whilst the appellants were in the UK and matters had continued to progress. The application had been made some time previously and the refusal letter was written in February 2020.
17. It was clear, Mr Corben submitted, that the second appellant's mother had been in receipt of care from her daughter (and to a lesser extent, her son) for three years. It would be disproportionate to remove that care. The threat of its

removal was already causing the second appellant's mother distress, as was clear from her witness statement. The local authority had seemingly adopted a 'wait and see' approach. At present, they attended for ten minutes in the morning and evening, and only to change the sponsor's pad. It was unlikely that there would be much more available. There were probably two options: paying for a private carer or residential care. The local authority had said that funding was not available for more 'at home' care and residential care was likely to be the only solution. That was not a proportionate outcome.

18. Addressing the respondent's policy, Mr Corben submitted that there was a clear concern that immigration control should not become 'subservient' to the care needs of British citizens. But it remained for the Upper Tribunal to strike a balance, taking that policy into account. In any event, the policy catered for physical care which was provided in the immediate aftermath of an emergency. That was not the situation here; the sponsor requires multi-disciplinary care and the situation was lifelong. There could be no doubt that the removal of the personal, human care and support provided by the second appellant would be a serious matter for her mother.
19. As for section 117B, Mr Corben submitted that subsections (4) and (5) were of no application. He accepted that s117B(1) militated against the appellants but only to a limited extent; they were overstayers but they had remained to look after the second appellant's mother. Section 117B(3) was not adverse to the appellants. They had seemingly managed without recourse to benefits, presumably as a result of the fact that the second appellant's father continued to work and her mother was presumably in receipt of benefits. It was to be recalled that the appellants had said that the second appellant's father was not well enough to provide care for the second appellant's mother. The removal of the appellants would necessarily result in an increased burden on the public purse, which was relevant to the balance of proportionality.
20. I reserved my decision at the end of the submissions.

### **Analysis**

21. It might be thought that the signal feature of this case is the age of the documentary evidence. The appeal was heard by the FtT in September 2021 and there has been no updated documentary evidence since then. It would have been open to Ms Lecointe to query whether the medical situation of the second appellant's mother remains as it was, but no such questions were put, and no submissions were made in that regard. Ms Lecointe instead accepted, as I have recorded above, that the second appellant's mother continues to require 'a lot of care'.
22. There were some difficulties in the oral evidence. Although the first appellant is said to accompany the second appellant and her mother to the latter's medical appointment, he was not able to state where her GP's surgery is, and he was not sure of the hospitals to which she had been admitted at various stages. It was also notable that the first appellant took to whispering answers to her husband from the back of the hearing room. She sought to provide particular assistance to him when he was asked about the alternative arrangements which might be made for her mother's care. Another whisper enabled him to muster the name of a particular hospital which he had previously been unable to recall. I warned the second appellant about these clearly audible interventions.

23. Despite those difficulties with the oral and documentary evidence, Ms Lecointe did not submit that the situation was not as claimed by the appellants. It is not for me to go behind that stance which might, in fairness to Ms Lecointe, have been adopted in light of the fact that the medical evidence which is before me speaks with one voice about the lifelong nature of the second appellant's mother's condition and the resulting need for care. I therefore accept what is said about those conditions and the care provided by the appellants, which is, in summary, as follows.
24. The second appellant's mother is 63 years old. She has been in the UK since 2005 and was granted Indefinite Leave to Remain on 29 July 2013. She is a nurse and worked in various nursing roles until she became ill. She also worked as a pastor and within her local community. She was formally diagnosed with diffuse cutaneous systemic sclerosis ("dcSSc" in the medical evidence) and polymyositis in July 2020. These conditions affect the skin, connective tissue and her muscles. She has also suffered acutely with gastrointestinal problems and, as observed in my first decision, she has lost a significant amount of weight as a result. She also has type 2 diabetes. There is a long list of prescribed medication in a letter from King's College Hospital dated 16 January 2021. The medical evidence also confirms that she has been admitted to hospital on a number of occasions since diagnosis.
25. The unchallenged evidence is that the appellants, particularly the second appellant, are responsible for her mother's care. The local authority provides a morning and an evening visit which lasts for no more than ten minutes. The carer merely changes her incontinence pad and then leaves. The appellants live fifteen minutes away by car and they spend much of their lives with the second appellant's mother. They puree her food and assist her in moving around her home. She is unable to do so on her own as a result of the damage to her muscles and joints. The appellants help her to the toilet and the shower and anywhere else she needs to go inside or outside the home. It is the second appellant who takes responsibility for her mother's medication, and she is well suited to doing so, having graduated from Bradford University with a Master's degree in Health and Social Care Management in 2014. She has also worked extensively in the NHS.
26. As I indicated to Mr Corben at the outset of his submissions, I accept his submission that there is plainly a family life between the second appellant and her mother. It is surprising, frankly, that the contrary was asserted by Ms Lecointe. The requirement is for beyond normal emotional ties or for a support which is real, committed or effective. That is evidently present here as a result of the extensive daily care which is provided by the second appellant to her mother as a result of the swift deterioration in her health over the last few years. The respondent proposes to remove the appellants from the UK, thereby interfering with that family life. The real question is obviously whether that step is proportionate.
27. There can be no suggestion in this case that the appellants came to the UK in order to provide care for the second appellant's mother. Her condition developed quickly, whilst they were already overstayers, and they stepped in to provide the care that she requires.

28. It is said in the statements made by all members of the family that an enhanced emotional dependency has developed between them since the second appellant's mother's health deteriorated. That must be so, and I have no difficulty in accepting what is said in the second appellant's mother's statement when she asserts that she is really concerned about the prospect of the appellants being removed from the UK. The same must be true of the appellants, and the second appellant in particular. In the event of their removal, she will undoubtedly be desperately concerned that her mother might not receive the care that she requires. I take that into account in my assessment of proportionality.
29. I am not satisfied on the evidence before me, however, that the second appellant's mother will be unable to receive the care that she requires in the event of their removal. I make that finding for two reasons.
30. Firstly, it is not established on the evidence before me that the second appellant's father is unable to provide a significant amount of assistance. It is said in his statement that he has asthma and high blood pressure and that he gets tired easily. He states that he cannot do what the appellants do for his wife because the second appellant 'is a professional in this field.'
31. The second appellant's father is 69 years old. He is a Nigerian national who arrived in the UK in 2008 and has also been in receipt of ILR since 2013. There is no medical evidence before me which shows that he is unable to care for his wife by performing all of the tasks currently performed by the appellants. The witness statements are silent as to whether or not he is in work. It was revealed in the oral evidence that he does still work and that he actually works in the care or support sector. The second appellant said that he supports people with disabilities at a day centre. The first appellant suggested that he works with the elderly by going on 'trips' with them, although he added that they did not talk much about his work. There is no reason founded in the evidence why the second appellant's father cannot assist his wife with feeding, toileting and bathing and with mobilising to medical appointments. Nor is there any reason why he cannot be responsible for ensuring that his wife takes the requisite medication. Whilst I understand that the second appellant's medical training provides extra reassurance in this regard, it is absolutely commonplace for couples to manage such medication regimes and there is no reason why that cannot happen here. The medication listed is to be taken orally, anally or by inhaler with the exception of one fortnightly injection and there is no evidence that the latter medication is administered by the second appellant. She is no longer using a feeding tube.
32. The appellant's father would have to give up work in order to provide the round-the-clock care which is required by his wife. That is a matter to which I will return to it in my overall consideration of the balancing exercise below.
33. Secondly, it is not established on the evidence before me that the local authority would be unwilling or unable to provide additional assistance to the second appellant's mother in her own home. It is, after all, under the statutory obligations set out in Part 1 of the Care Act 2014. I agree with Mr Corben's submission that the local authority has thus far adopted a 'wait and see' approach to the situation. The amount of daily visits has doubled from the single visit described in the second appellant's witness statement but there have been no further increases. They have stated, as the second appellant said in her evidence, that they will not consider whether to provide any more assistance

because adequate care is currently provided by the second appellant. They had relied, she explained, on what she had told them about her professional background, and they were content that she was able to provide what was required. That was a perfectly proper approach for the local authority to adopt. There is nothing before me, however, to support Mr Corben's further submission that the local authority would not provide more care in the event that the second appellant was no longer in the UK. I am unable to make the finding which he invited me to make, which was that the second appellant's mother would probably end up in residential care, in the event that the appellants' appeal is unsuccessful. It would be wholly speculative to make that finding without clear evidence that the local authority will not provide additional care at home in the event that it is required because of the appellants' removal.

34. For these reasons, I conclude on the evidence before me that the second appellant's mother could receive adequate care in the absence of the appellants, such care being provided in her own home by her husband with the assistance of the local authority if necessary. I will return in my final analysis to the additional cost to the public purse which would result from such arrangements.
35. There are other matters on the appellants' side of the balance sheet. The second appellant has had her own health issues. There is no anonymity direction in this case and I need not set out those difficulties in full. I have considered what is said in her witness statement, supported as it is by some medical evidence. I accept that she is concerned about leaving the UK whilst treatment is ongoing and whilst she and the first appellant continue to try for a child with the assistance of IVF. That said, there is no evidence before me to show that the treatment which she and they require is not available in Nigeria.
36. Both appellants have made a contribution to the community of the United Kingdom. He entered as a Minister of Religion and has served in that role. She has worked in health and social care and has an impressive CV. She also started the Care Navigation Service in Westminster, as she sets out at [16] of her witness statement. She has also undertaken work as a youth volunteer. It is clear from the character references in the appellants' bundle that they have made a difference to the lives of those around them. I take account of these matters as weighing in their favour but only to the extent permitted by Thakrar (Cart JR; Art 8: value to community) [2018] UKUT 336 (IAC); [2019] Imm AR 143. I have also taken account of their mutually expressed concern about the difficulties they will face on return to Nigeria, although I recall in that connection that they are unable to meet the Private Life Immigration Rules, it having been found previously that there are not very significant obstacles to their re-integration to Nigeria.
37. I must now turn to the factors which weigh in the respondent's favour in the balance sheet of proportionality. The fact that a person is unable to meet the Immigration Rules is a matter to which considerable weight is to be attached at a general level: see the analysis of Ryder LJ, then Senior President of Tribunals, at [32]-[34] of TZ (Pakistan) & PG (India) v SSHD [2018] EWCA Civ 1109; [2018] Imm AR 1301. Mr Corben submitted that there was a lacuna in the Rules because there was no express provision for a person in the position of the second appellant's mother to secure or retain the care of a person subject to immigration control. I do not accept that submission. In my judgment, the respondent's policy is clearly that such care should generally be provided by persons who are not subject to immigration control or, failing that, it should be provided by the state. That is quite clear from the Immigration Directorate Instructions at Chapter

17, section 2, which states in terms that the policy remains as stated in R v SSHD ex parte Zakrocki (1996) 32 BMLR 108. The intention of the Secretary of State is to accord priority to immigration control over the desire to provide care in the community. That is not a lacuna in the Immigration Rules; it is a policy decision which militates against the appellants, at least at a general level, in this case.

38. I attach some additional significance in this case to the appellants' overstaying. Mr Corben submitted that they had only overstayed because the second appellant's mother had fallen ill. With respect to Mr Corben, I do not consider the chronology to support that submission. There is no reference to the second appellant's mother's health in the solicitor's letter which accompanied the applications for leave to remain. That letter is dated 8 February 2020 and it was only in July 2020 that the second appellant's mother was diagnosed with these conditions. The appellants have not had leave to enter or remain since August 2017, although they have made applications to regularise their status since then. The fact that they have overstayed is deserving of some weight on the Secretary of State's side of the scales.
39. The appellants speak English and s117B(2) is a neutral consideration. There is no evidence to suggest that they are not financially independent of the state and s117B(3) is also a neutral consideration.
40. I accept Mr Corben's submission that s117B(4) does not serve to apply a normative presumption that little weight should be given to the family life established between the appellants and the second appellant's mother. That subsection applies only to a private life or a relationship formed with a qualifying partner that is established at a time when the person is in the UK unlawfully. It certainly applies to any private life established by the appellants since August 2017 but it has no application to the mainstay of their case.
41. Section 117B(5) - which applies a normative presumption of little weight to a private life established when the person's immigration status is precarious, applies to all of the appellants' private life, since they have never had immigration status which is not precarious. That subsection does not apply to a family life, however, and is also of no application to the mainstay of the Article 8 ECHR case.
42. Weighing all of those considerations as I must, I find that the interests of immigration control outweigh the family life established by the appellants with the second appellant's mother. I have not accepted that her care needs will not be met in the absence of the appellants; that care can be provided by her husband and, if necessary, the local authority. I accept that this will involve some distress for all concerned, particularly the second appellant's mother. It will also involve an additional cost to the public purse, occasioned by the second appellant's father giving up work and, if necessary, the local authority undertaking a statutory needs assessment and providing care under the Care Act 2014. In view of the long-standing governmental policy to which I have already referred, however, I do not consider that additional cost to diminish the public interest in immigration control. Ultimately, whilst the consequences for the family will be upsetting, I do not accept that they will be anywhere near as severe as Mr Corben suggested, and I find that the public interest in immigration control suffices to establish that those consequences are justifiably harsh on the facts of this case.



43. In the circumstances, the appeals are dismissed on Article 8 ECHR grounds.

**Notice of Decision**

The decision of the FtT having been set aside in part, I remake the decision on the appeals by dismissing them.

**M.J.Blundell**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

21 February 2024