



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001840

First-tier Tribunal No: HU/02783/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 31 July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

Abigail Abikemi Ifeanyi
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Pipi (Counsel, instructed by Broad Street Solicitors)
For the Respondent: Mr K Ojo (Senior Home Office Presenting Officer)

Heard at Field House on 8th July 2024

DECISION AND REASONS

1. The Appellant's immigration history and the basis of her human rights application are set out in the decision of Judge Aziz promulgated on the 14th of February 2022 following the hearing on the papers on the 4th of January 2022. The Appellant sought permission to appeal the decision, permission was granted by First-tier Tribunal Judge Oxlade in a decision of the 13th of April 2022.
2. At paragraph 10 of the decision Judge Aziz noted that there was no Appellant's bundle. Judge Aziz dismissed the appeal on the basis that the Appellant had not shown that there were insurmountable obstacles to family life with her partner continuing in Nigeria. In grounds to the First-tier Tribunal the Appellant argued that bundles had been served by email on the 12th of November 2021.

3. Judge Oxlade granted permission to appeal to the Upper Tribunal on the basis that there may have been an administrative oversight but also observed that the evidence that had been filed did not show that the Appellant addressed the point made by Judge Aziz. It remained to be seen whether the evidence which would have been seen by the Judge would have shown that the Appellant's case met EX1.
4. It is not clear why the case took so long to get to a hearing following the grant of permission to appeal. At the hearing the Appellant was represented by Mr Pipi, I was informed that an email had been sent to the tribunal on the morning of the hearing setting out the Appellant's position. That was forwarded to me at 13.12 with 3 attachments which are discussed below.
5. Mr Pipi explained that he had only been instructed over the weekend which is why his skeleton argument had not been served on the Respondent as required. From his skeleton argument and as I was informed at the hearing the Appellant's partner had died on the 19th of February 2023. Mr Pipi rightly observed that that fundamentally changed the position from that prevailing when permission was granted. He did not say but I observe that it changes the position from that prevailing before Judge Aziz.
6. Relying on the case of EG & RT (UT rule 17: withdrawal; rule 24: scope) Ethiopia [2013] UKUT 143 (IAC) I was invited to sit as a First-tier Tribunal Judge and hear an application to amend the grounds of appeal to permit the addition of a new ground. The difficulty with that is that Mr Pipi was in reality seeking to introduce a new ground of appeal for the original application and appeal to be allowed.
7. It cannot have been an error for Judge Aziz to proceed on the basis that he did as there was no suggestion that the Appellant's partner had died or that his demise was imminent. Even if that evidence had been before Judge Aziz that would have been a new matter requiring the consent of the Secretary of State. His death came over a year after the grant of permission to appeal to the Upper Tribunal and was not notified to the Upper Tribunal until the morning of the hearing.
8. The delay was explained by Mr Pipi on the basis that the Sponsor had been responsible for the conduct of the hearing and it was only recently that the Appellant had been able to raise funds to instruct solicitors. In the email sent to the Upper Tribunal the attachments were the Appellant's authority, a letter of the 5th of June 2024 sent to the First-tier Tribunal in Loughborough and a letter from the Appellant's step-daughter of the 26th of April 2021.
9. Mr Pipi accepted that the documents that had been sent by the Appellant were the passport, photographs and tenancy agreement and other personal documents, these are found at pages 33 to 75 of the CE file. None of these relate to the difficulties that the Appellant and Sponsor could face living together in Nigeria. In line with the observation of Judge Oxlade I am satisfied that the absence of the bundle was not material to the decision made by Judge Aziz as there was no evidence in it that had any bearing on the point under paragraph EX1 of the Immigration Rules. Judge Aziz properly decided the issue on the evidence and did not err in the conclusion reached.
10. It is not clear if the solicitors' letter of the 5th of June 2024 reached the First-tier Tribunal, it only reached the Upper tribunal on the day of the Upper Tribunal hearing. There is no evidence that the letter from the Sponsor's daughter was served on the

First-tier Tribunal, although it is in the CE file at page 103, it appears to be part of the evidence submitted in support of the application for permission to appeal. The Sponsor's daughter is now 21 years old and so no longer a minor.

11. The application to amend the grounds, aside from being made very late, overlooks that Judge Aziz did address the position of the Appellant's Step-daughter in paragraphs 32 to 34. The Appellant could not qualify as a parent for the reasons given and as the Judge noted the evidence relating to their relationship was scant. It is not an error for a Judge to consider an appeal on the evidence presented and if the evidence is limited it is not an error to, in effect, find that the burden of proof in relation to proving relevant facts has not been discharged.
12. In summary the Appellant's circumstances are now significantly different from those that were considered by Judge Aziz. He decided the appeal on the evidence that had been presented and the grounds do not show any error in his approach to paragraph EX1. The application to amend the grounds is made very late, the explanation does not justify the delay and was refused. In any event the grounds do not show an error on the approach of the position of the Sponsor's daughter/the Appellant's step-daughter which was made on the evidence before Judge Aziz.

Notice of Decision

13. This appeal is dismissed.

Judge Parkes

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 10th July 2024