Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/31013/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 11 November 2014	**On 4 December 2014**

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MS BASIRAT SURULERE JIMOH
(No Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Collins of counsel instructed by TKD Solicitors
For the Respondent: Mr C Avery a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria who was born on 8 August 1974. She has been given permission to appeal the determination of First-Tier Tribunal Judge Braybrook ("the FTTJ") who dismissed her appeal against the respondent's decision of 4 July 2013 to refuse her leave to remain in the UK under the provisions of Appendix FM, on the

grounds of long residence under paragraph 276ADE and on human rights grounds.

2. The appellant arrived in the UK on a visit visa on 12 August 2004 and remained without leave when it expired. In April 2009 she started babysitting for Mr Rufai. He had two children who had been born in January 2006 and August 2007. He had come to the UK in November 2000, also on a visit visa, and had subsequently married a French national. He was granted an EEA family permit and, in August 2008, indefinite leave to remain. At the end of 2008 his marriage broke down and in January 2009 he and his wife separated. Initially, the appellant babysat for his children four days a week and then she moved in full-time. Mr Rufai became a British citizen in September 2009. He obtained a decree absolute of divorce in January 2010. The appellant became romantically involved with him in early 2012. She was detained at his home by the immigration authorities in November 2012.

3. The appellant applied for leave to remain but this was refused on 4 July 2013. The appellant appealed and her appeal was dismissed by a First-Tier Tribunal Judge on 24 March 2014. The appellant appealed and the Upper Tribunal found that the judge had erred in law and ordered that the appeal be reheard. It was in these circumstances that the appeal came before the FTTJ on 23 July 2014. Both parties were represented, the appellant by Mr Collins who appears before me.

4. The FTTJ accepted that the appellant was caring for Mr Rufai's children but found that her relationship with them did not go beyond that of a long-standing child-minder. There were substantial discrepancies between the evidence of the appellant and Mr Rufai which the FTTJ considered fundamentally damaged their credibility. She concluded that the relationship between them was not genuine but advanced to meet the threat of the appellant's removal. The FTTJ found that the appellant did not meet the requirements of paragraph 276 ADE. She went on to consider the appellant's human rights outside the Immigration Rules. Whilst she doubted that there was a family life in the normal Article 8 sense she was prepared to accept that the appellant's removal would be an interference with family life. It was accepted that the appellant's role as a child-minder was more significant than it would otherwise have been because of the absence of a mother figure in their lives.

5. The FTTJ gave limited weight to the assessment of the expert witness, Ms Pagella. The appellant's removal would be an upheaval but this was to some extent due to the fact that Mr Rufai had knowingly taken the risk of employing someone who had no right to remain in the UK and was at risk of being removed at any time. The FTTJ considered the appellant's private life in this country and the factors which contributed to this. The best interests of the children did not trump the public interest factors. The FTTJ found that the

appellant's removal would be a proportionate interference with her Article 8 human rights. She dismissed the appeal under the Immigration Rules and on human rights grounds.

6. The appellant applied for permission to appeal to the Upper Tribunal which was granted. There is a Rule 24 response from the respondent. The appellant and Mr Rufai attended the hearing. Mr Collins tendered the original of their marriage certificate showing that they had married on 12 August 2014, after the hearing before the FTTJ.

7. Mr Collins relied on his grounds of appeal. They are lengthy and detailed. I hope I do his submissions no disservice if I say that they added little to the grounds. Mr Avery relied on the Rule 26 letter, arguing that essentially the grounds were no more than disagreements with conclusions properly reached by the FTTJ on all the evidence. I reserved my determination.

8. The first ground of appeal submits that the FTTJ erred in law by failing to address and make appropriate findings in relation to the relevant parts of section EX1 of Appendix FM to the Immigration Rules. The grounds set out these requirements as they relate to the children and the relationship between the appellant and Mr Rufai. As Mr Collins accepts the FTTJ referred to these provisions in paragraph 6 of her determination. I find that the FTTJ did properly assess these requirements reaching the conclusion open to her that they did not assist the appellant because, in relation to the children, she did not have a genuine and subsisting parental relationship with them. In relation to Mr Rufai they did not have a genuine and subsisting relationship.

9. The second ground of appeal submits that the FTTJ's conclusions as to the relationship between the appellant and the children were irrational and contrary to the weight of the evidence. Mr Collins accepted that this amounted to a perversity challenge. Whilst the grounds identify factors which it is said the FTTJ should have taken into account it is not suggested that she failed to refer to any of them. I find that this ground is no more than a disagreement with conclusions properly reached by the FTTJ on the evidence. They are not remotely perverse.

10. The third ground of appeal is a similar perversity challenge. It sets out the FTTJ's findings as to aspects of the appellant's life and relationship with the children and goes on to argue that the impact on the children was not properly considered. I find that this ground is also no more than a disagreement with conclusions properly reached by the FTTJ on the evidence. There is a detailed and thorough assessment of the appellant's relationship with the children and the effect on them of her removal from the country.

11. The fourth ground is another similar challenge, arguing that the FTTJ erred in law by giving an inadequate and over simplistic view of the effect of the appellant's removal on the children's lives. It fails for the same reason as grounds two and three.

12. As to ground five, I can find no fault with the FTTJ's consideration of or conclusions in relation to the evidence of Ms Pagella. For the reasons she gave it was open to her to give this limited weight. This is another unmeritorious perversity challenge.

13. As to ground six, the FTTJ correctly stated that no submissions were made in relation to Article 8 private life. Mr Collins does not suggest that he made any oral submissions and I can find no indication that the FTTJ failed to consider the matters advanced for the appellant in his skeleton argument. In paragraph 6 of the determination she records that he had submitted "a very detailed skeleton". Mr Collins does not suggest that there were any factors relevant to private life which the FTTJ failed to consider. I find that the limited private life factors were set out and properly considered in paragraph 36 of the determination.

14. I have not been asked to make an anonymity direction and I see no good reason to do so.

15. I find that the FTTJ did not err in law and I uphold her determination.

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Signed Date 12 November 2014

Upper Tribunal Judge Moulden