Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/31531/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 25 June 2014	**On 14 July 2014**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MRS ESTHER TOYIN ANIA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Khalid, Counsel
For the Respondent: Miss J Isherwood, HOPO

DECISION ON ERROR OF LAW

1. The Secretary of State appeals with leave against the determination of First-tier Tribunal Judge C M Phillips who allowed the appellant's appeal against the respondent's decision to remove her from the United Kingdom and to refuse her application under private life provisions of Article 8. The

judge allowed the appellant's appeal by reference to paragraph 276ADE of the Immigration Rules

2. The grant of permission stated that it is debatable whether the determination adequately justifies the conclusion that the respondent *"has not ties including social, cultural or family)"* with Nigeria.

3. The appellant is a national of Nigeria, born on 23 May 1968 and is now aged 46. She entered the UK on 15 September 1998 and was granted leave to enter expiring on 15 September 1999 as the spouse of a person present and settled in the UK. She submitted an application on 13 April 2000 for leave to remain as a Section 9 overstayer; the application was refused with a right of appeal on 22nd July 2003. She lodged an appeal which was heard on 26 October 2005 and dismissed. Her appeal rights were exhausted on 18 January 2006.

4. On 1 August 2012 the appellant submitted an application for indefinite leave to remain in the United Kingdom outside the Immigration Rules on compassionate grounds. The application was refused on 16 July 2013 on the grounds that her removal would not place the UK in breach of its obligations under the Human Rights Act 1998. Directions were also given under Section 10 of the Immigration and Asylum Act 1999 for her removal from the UK.

5. The Secretary of State noted that the appellant was 45 years old and had entered the UK on 5 September 1998 and had not as a result resided in the UK for twenty years. Whilst she had not lived in Nigeria for fourteen years, she had lived the majority of her life in Nigeria and the Secretary of State did not accept that the respondent would have severed all ties, including social, cultural and family with Nigeria. Her application on the basis of private life was refused under paragraph 276CE with reference to paragraph 276ADE of the Immigration Rules.

6. Consideration was given by the Secretary of State to the fact that the appellant had raised domestic violence issues with regard to the breakdown of her marriage in 1999, but had not submitted evidence from an independent or official source and whilst noting the statements submitted with her application did not accept them as sufficient evidence of domestic violence or the breakdown of the marriage for this reason. In the circumstances it was considered that there were no sufficiently compelling or compassionate circumstances to justify allowing the respondent to remain exceptionally and outside the Immigration Rules.

7. The judge heard evidence from the appellant and a witness Mrs Augusta Ali both of whom she found to be credible witnesses whom she said had provided a credible account of an abusive marriage. The judge was satisfied that the appellant has been a victim of domestic violence but it was not clear on the evidence that their relationship finally broke down before the end of her leave which expired on 15 September 1999.

8. The judge then turned to the consideration of private life under paragraph 276ADE and the issues raised in sub-paragraph (vi). She reminded herself that the meaning of the word *"ties"* were considered in relation to a different Immigration Rule worded in the same way in **Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 00060 (IAC)** where it was held as follows:

> *"The natural and ordinary meaning of the word 'ties' in paragraph 399A of the Immigration Rules imports a concept involving something more than merely remote of abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and it is not to be limited to social, cultural and family circumstances."*

9. The judge found that the respondent had accepted that the appellant does not have family ties but did not accept that she had lost ties with Nigeria in the time from September 1998 when she arrived in the UK. It was submitted that she would suffer social exclusion on return to Nigeria where she has nothing to return to.

12. The judge then went on to find as follows:

> *"51. The appellant is now aged forty-five, single and I find that she is a vulnerable lady with what I find to be a credible fear of relationships. She has no funds and has not gained academic qualifications during her time in the United Kingdom. She has no relatives in Nigeria and no accommodation. She has no one to turn to in Nigeria not having a circle of friends there. She provided a credible account that she is frightened of the social norms that would discriminate against her in Nigeria as a middle aged single woman without children or family. I find that she has been depicted locally in the area where her parents came from as a person who abandoned her parents so they died when in fact after her arrival in the United Kingdom she was subjected to domestic violence, she was denied access to food, money, personal papers and denied telephone contact with her parents by her husband.*
>
> *52. I find that I am satisfied that this is a case where a rounded assessment of all the relevant circumstances leads to a finding that this appellant now has no ties to Nigeria. She had ties at the time that she left at the age of thirty-one in September 1998 but her years of isolation in an abusive marriage, the deaths of her parents, the loss of needlework skills, her inability to have children, the removal of her womb, her vulnerability and the lapse of time leads me to find, against the background of the*

findings set out above and by reference to Ogundimu that the appellant has no ties to Nigeria and accordingly meets the requirements of paragraph 276ADE(vi) of the Immigration Rules. It follows that I allow the appeal under the Immigration Rules.

53. Having allowed the appeal under paragraph 276ADE of the Immigration Rules I find that it is not necessary for me to go on and consider the application further and again and make separate findings under Article 8 outside the Immigration Rules. I am reinforced in that view by the case of Shahzad (Art 8: legitimate aim) [2014] UKUT 00085 (IAC) where it was held that:

> *Where an area of the rules does not have such an express mechanism, the approach in R (Nagre) v Secretary of State for the Home Department [2013] EWHC 720 (Admin) [29]-[31] in particular) and Gulshan (Article 8 – new Rules – correct approach) [2013] 640 (IAC) should be followed: i.e. after applying the requirements of the rules, only if there may be arguably good grounds for granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them."*

13. I find that the judge made material errors of law in her consideration as to whether the appellant has no ties with Nigeria. Whilst it had been accepted by the respondent that the appellant does not have family in Nigeria, the judge failed to consider whether the appellant has social or cultural ties with Nigeria. Her findings concentrated on the appellant's circumstances in the UK and her fear of returning to Nigeria because of the social norms that would discriminate against her as a middle-aged single woman without children or family. The judge failed to consider that the appellant had a life in Nigeria before arriving in the UK. She was educated and employed there. The judge failed to consider the exposure the appellant has had to the cultural norms of Nigeria and whether she speaks any or some of the languages of Nigeria.

14. The judge's failure to consider these factors undermine her finding that the appellant now has no ties to Nigeria.

15. The judge's decision cannot stand. It is set aside in order to be remade.

16. Because the judge allowed the appellant's appeal by reference to paragraph 276ADE, she failed to determine the appellant's appeal under Article 8. It is also for this reason that the appellant's appeal has to be reheard.

17. The judge's finding that the appellant was the victim of domestic abuse is to stand.

Signed Date

Upper Tribunal Judge Eshun

DIRECTIONS

The appellant's appeal is remitted to Taylor House for re-hearing by a judge other than FtTJ C M Phillips