IAC-TH-LW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/02977/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 January 2015	**On 15 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

S A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: None
For the Respondent: Miss J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

The History of the Appeal

1. The history of the appeal is set out in my decision of 24 November 2014 which contains my reasons for having set aside the original determination of the appeal. My present decision should be read in conjunction with that decision, whose contents it does not therefore repeat.

2. In the rehearing of the appeal in relation to paragraph 276ADE(vi) of the Immigration Rules, the sole issue is whether, at the date of the decision on 13 December 2013, the Appellant had "no ties (including social, cultural or family)" with Nigeria, as that criterion has been judicially understood. These issues are set out in paragraphs 5 to 7 of my first decision. Although the relevant provisions of the Immigration Rules have now changed, the appeal is to be re-determined by reference to the Immigration Rules as they stood at the date of the decision. Article 8 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, which would be the qualified right of the Appellant to respect for her private and family life, is not in point. Nor therefore are paragraphs 117A-D introduced into the 2002 Act by Section 19 of the 2014 Act.

3. The burden of establishing the absence of ties with Nigeria rests upon the Appellant, to the standard of the balance of probabilities.

The Hearing

4. The Appellant attended the hearing. She was accompanied by eighteen people and three infants. All were present throughout the hearing, except that a few of them left and returned at different points.

5. At the time of the hearing on 10 November 2014 the Appellant was represented by Counsel instructed by Lifeline Options Community Interest Company of Birmingham. Later, on 6 January 2014, Raj Law Solicitors of London SW17 wrote to the Tribunal to say that they were no longer representing the Appellant. At the outset of the hearing I clarified with the Appellant that she was not legally represented.

6. In my earlier decision I permitted at paragraph 13 the submission of further evidence not later than fourteen days before the date of the hearing. On the morning of the hearing the Appellant handed to the usher a folder containing a statement by herself, statements by a number of other people which were essentially testimonials to her, copies of the passports of various people and some medical booklets. I invited Miss Isherwood to look at this material and to say anything that she wished to about whether it should be received in evidence. Having done so she said that the Appellant had failed to submit this evidence for the first hearing, some of it took matters much further and she would like to see the original passports, of which there were photocopies. That said she was trying to be fair and was content to leave to the Tribunal the decision whether to accept the evidence.

7. I asked the Appellant why this evidence had not been submitted sooner. Her answer related to the difficulties which she said that she had had with both firms of solicitors.

8. Having considered the matter I said to her that I had to strike a judicial balance between fairness to her and unfairness to the Respondent. I was willing to accept her own statement, which gave further information about her situation. I was not willing to accept the remainder of the evidence, because it was not fair for the Respondent to be confronted with it without notice. I returned the folder of material to her. Subsequently copies were made of the passport and residence permit of one of her daughters and the residence permit of another, and I accepted them into evidence.

The Evidence

9. Miss Isherwood asked the Appellant a total, according to my record, of 54 questions. I then invited the Appellant to add any evidence of her own. She said that she was pleading to be allowed to stay in the UK to work and to contribute to the wellbeing of the UK with her children. Miss Isherwood then made submissions. I invited the Appellant to respond. She said that she always goes to see her children at least every two weeks; she cannot ask her first daughter whether she has contact with her father; she always goes to her doctor to get medicine; and there is nobody in Nigeria for her to go back to. She pleaded for mercy. I reserved my determination.

10. Miss Isherwood put to the Appellant that she had had no status in the UK since 2007. The Appellant said that she had always put in an application to the Home Office in 2009 or 2010. She had spent the majority of her life in Nigeria and had no problems with the language there. Most of the people who had come to the hearing today to support her were originally from Nigeria. If she had to go back to Nigeria they could not support her. Having made a political asylum claim in 1996 she had been afraid when she went back to Nigeria in 2003 but had done so in order to look after her only sister, who was shortly to die. She has a lot of family members in the UK. They do not go back to Nigeria and she does not know why. She had not been employed in Nigeria. She could not put to use in Nigeria the employment skills that she had acquired in the UK because she would not be allowed to work there and, having left a long time ago, does not know how to do it again.

11. In the UK the Appellant looks after her children and grandchildren. Her daughters do not work. If she returned to Nigeria they could not continue to look after their children because they have to work. After giving birth one of her daughters had wanted to commit suicide. The Appellant had had to stay beside her. If the Appellant were not here her daughter would commit suicide. Nowadays the Appellant takes her grandchildren to the park, to school and to football. Nobody else would do this for her. All of her four children have the same father. Her oldest daughter is the only one who knows him. The Appellant does not know when that daughter last saw her father. The Appellant does not have anything to do with him. She moves around between her daughters, staying with each of them for two or three weeks. They could not manage without her. The Appellant

suffers from diabetes and high blood pressure. She does not know when her daughters were granted leave to remain in the UK.

12. The Appellant said that she does not accept that she has ties of family and friendship to Nigeria. She does not have contact with the father of her daughters, nor anybody to talk to in Nigeria, and her daughter would not be able to help her through own connections in Nigeria. If she is allowed to stay in the UK she will work. She could work at night, and help her family with the children during the day. She could not go back to Nigeria with her family members who are not entitled to stay in the UK because there is nobody at home for them.

13. In her statement the Appellant narrates her immigration history. She worked in her aunt's shop for about four years. Later she worked as a care assistant with elderly people, and studied NVQ and English at college. Her extended family live in London, Birmingham, Reading and Manchester. She used to go to church with her aunt and now goes to the mosque. Her children have grown up in the UK and are not able to adapt to life in Nigeria. Her family are doing well in the UK.

14. The Appellant was a hesitant and nervous witness, to whom questions had often to be repeated. In submissions Miss Isherwood challenged her credibility. Her manifest wish to remain in the UK influenced her responses. I found her an unreliable witness. I accept her evidence about what she does and has done in the UK, which she has no reason to misrepresent. I accept that she has no contact with the father of her children and no relatives or home in Nigeria. I do not otherwise accept her evidence about why she and those members of her family who are not entitled to remain in the UK could not return to Nigeria.

15. In evidence, as stated, are the Nigerian passport and UK residence permit of one of her daughters, showing her to have leave to remain, with work permitted, until 21 February 2016, and the residence permit of another of her daughters showing her to have leave to remain with work permitted, until 2 February 2015.

Determination

16. In reaching my determination I have paid regard to the submissions made to me by both parties.

17. As stated in my first decision, the Appellant was born in Nigeria and lived there for the first 37 years of her life until leaving as an adult in 1996. Now aged 55, she spent the next eighteen and a half years of her life in the UK. During that time she has returned once to Nigeria in 2003. Save for the father of her children she has no relatives, home or work history there. In the UK two of her four daughters have the right to remain and the other two have permission to remain, one for three more weeks and the other for a little over a year. She has a large extended family in the

UK. Apart from her daughters, there is no evidence of their immigration status. If any of them do not have permission to remain, they should be returning to Nigeria and so are potential family members for her there.

18. In the light of the judicial guidance in **Ogundimu** I assess the evidence holistically. As stated in paragraph 11 of my first decision, the Appellant lived in Nigeria for the first 37 years of her life, exposing her to the cultural norms of Nigeria, whose language, English, she speaks. Although she has no contact with him, the father of her four children lives there. On the evidence presently available, two of her four daughters will have to return to Nigeria, one of them, who can accompany her, imminently and the other within shortly after one year. The Appellant has not established by evidence that any or all of her extended family are entitled to remain in the UK. If they are not, they too have to return to Nigeria.

19. The Appellant has to establish, on the balance of probabilities, that she has no ties, including social, cultural or family ties, with Nigeria. Viewing the evidence holistically I find that she has not established this. It follows that at the date of the decision she did not comply with the Immigration Rules. Desperate to remain in the UK, she invokes compassion. However, the Immigration Rules represent the law, and the Appellant does not comply with them. The appeal accordingly fails, and is dismissed.

20. In my first decision I erred at paragraph 14 in setting aside paragraph 46 of the original determination, which is the anonymity direction. This I reinstate.

Notice of Decision

21. The appeal is dismissed under the Immigration Rules.

22. The appeal remains dismissed under the Immigration (European Economic Area) Regulations 2006.

23. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

24. As I have dismissed the appeal there can be no fee award.

Signed Dated: 14 January 2015

Deputy Upper Tribunal Judge J M Lewis