



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/22676/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 July 2015
Oral judgment at hearing**

**Decision & Reasons Promulgated
On 22 July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS DEBORAH OYOVWE HILLYAR NEE OYABUGBE
(ANONYMITY DIRECTION NOT MADE)**

Claimant

Representation:

For the Appellant: Ms A Holmes, Home Office Presenting Officer

For the Respondent: Mr J Ficklin, Counsel instructed by Paragon Law

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal (Judge Onoufriou)(FTT), who allowed the Claimant's appeal under the Rules with reference to EX.1 of Appendix FM. That decision was promulgated on 1 April 2015. The background facts, in brief, are that the Claimant came to the UK in 2007 to join her partner who was a UK citizen. The relationship became physically and mentally abusive. Since then the Claimant has suffered from serious mental health

difficulties which continue with long term depression with suicidal tendencies. Some time later she met and married her husband, Mr Hillyar, a British citizen. Her Nigerian family are mainly settled in the UK and she gains considerable support from her brother Emmanuel.

Grounds of application

2. In ground 1, the Secretary of State argued that the FTT failed to provide adequate reasons for findings made as to the possibility of future employment for the Claimant at [21c]. In ground 2 the Secretary of State argued that the FTT was inconsistent in its consideration of EX.1 and paragraph 276ADE, finding on the one hand that there were insurmountable obstacles to family life being continued in Nigeria, and on the other hand, with her husband's help the Claimant's there would be no insurmountable obstacles to integration in Nigeria[3].

Permission to appeal

3. Permission to appeal was granted by First-tier Tribunal Judge Nicholson on 3 June 2015 in the following terms;

“Ground 2 contends that the judge erred in making inconsistent findings in relation to insurmountable obstacles under Appendix FM and integration under paragraph 276ADE.

At paragraph 21.1.c the judge found, on the one hand, that there were insurmountable obstacles to the appellant and her spouse enjoying family life in Nigeria and, on the other, that there would be significant obstacles to integration.

Whilst the two tests are not the same it is difficult to see how obstacles which are not very significant could nonetheless be considered insurmountable and permission is granted in respect of ground 1.”

Submissions

4. Mr Ficklin relied on the Rule 24 response and in essence argued that these are two separate tests. There may be some similarity in the threshold but the First-tier Tribunal was entitled to reach the decisions that it did as regards the substance of those tests.
5. Ms Holmes argued that the inconsistency arose more in respect of the language or the wording used in the Decision and Reasons of the First-tier Tribunal. The tenor in consideration of the two tests was distinct, as shown in the FTT decision.

Discussion and decision

6. I am satisfied that there was no error of law and that ground 1 has not been made out. The evidence before the FTT was strong and it made clear findings which were adequately supported by reasons. In particular the FTT had a report from consultant psychiatrist Dr Winton, whose opinion was that the Claimant was dependent on both her husband and her brother, she had difficulties in making decisions due to some cognitive impairment and would be vulnerable to exploitation. That report

specifically concluded that the Claimant was not in a position to be able to work.

7. As to the second ground, essentially I am in agreement with the argument and submissions made by Mr Ficklin and as set out in the Rule 24 response. There was no challenge to the findings made. It is clear to me that these are two different tests and although there is some overlap in terms of the threshold, the substance of the tests are fundamentally different. In this instance the FTT has made clear findings and given reasons with regard to those tests separately. EX 1 provides that very significant difficulties faced by the applicant or their partner in continuing family life together outside the UK and which could not be overcome or would entail very significant hardship for the applicant or her partner. This test applies equally to the applicant or their partner. EX.1 considers if there are insurmountable obstacles to family life on return to the country of origin and I am satisfied that the findings and reasons of the FTT are sound. It was open to the FTT to make those findings on the evidence before it with reference to employment difficulties and limitations, financial support, the fears of her husband, the family connections of the husband in the UK, the Claimant's mental health difficulties and her support network in the UK [21. 1b & c].
8. The FTT correctly considered Paragraph 276 ADE separately [21.3]. The relevant issue of private life does not focus on family life but looks at the question of integration, which covers the applicant's social, cultural and family ties in the country of origin. Here the FTT found that the Claimant could feasibly reintegrate with the help of her husband. It found that she could not reintegrate alone because of her mental health difficulties and lack of support in Nigeria. In my view that is not the same as the finding that there were insurmountable obstacles to family life which the FTT found would not be able to be pursued on return to Nigeria. I find no inconsistency in the findings and reasons given by the FTT. In the event that there was an error of law regarding paragraph 276ADE, it would not be material given the findings and conclusion under Ex 1.
9. Accordingly I find no material error of law. The determination shall stand and the Secretary of State's appeal is dismissed.

Notice of Decision

There is no material error of law.

The decision and reasons shall stand.

Appeal is allowed on immigration grounds under appendix FM.

No anonymity direction is made.

Signed

Date 21.7.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award.

Signed

Date 21.7.2015

Deputy Upper Tribunal Judge G A Black