**Upper Tier Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA/30155/2014

# THE IMMIGRATION ACTS

**Heard at Field House**
**On 22 October 2015**

**Decision and Reasons Promulgated**
**On 23 October 2015**

**Before**

**Deputy Upper Tribunal Judge Pickup**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**Hannah Oluwafunmilayo Alakijan**

Claimant

**Representation:**

For the claimant: Mr E Oremuyiwa, of London Investigation Immigration
For the respondent: Mr L Tarlow, Senior Home Office Presenting Officer

## DECISION AND REASONS

1. The claimant, Hannah Oluwafunmilayo Alakijah, date of birth 14.5.92, is a citizen of Nigeria.

2. The Secretary of State appealed against the decision of First-tier Tribunal Judge Lal promulgated 16.3.15, allowing the claimant's appeal against the decision of the Secretary of State, dated 3.7.14, to refuse her application for leave to remain in the UK on the basis of family and private life. The Judge heard the appeal on 11.3.15.

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3. Judge Lal dismissed the appeal under the Immigration Rules but allowed it outside the Rules under article 8 ECHR, finding it disproportionate to remove the claimant given her level of integrations since arriving in the UK around the age of 13.

4. First-tier Tribunal Judge Lambert granted permission to appeal on 13.5.15.

5. Thus the matter came before me on 16.9.15 as an appeal in the Upper Tribunal. For the reasons set out in my error of law decision, I found such error of law in the making of the decision of the First-tier Tribunal as to require the decision of Judge Lal to be set aside and remade by me at a continuation hearing in the Upper Tribunal. In essence, I found that the First-tier Tribunal Judge failed to identify any compelling circumstances insufficiently recognised in the Rules so as to justify going on to consider and grant leave to remain outside the Rules under article 8. Further, there was only cursory reference to the public interest considerations under section 117B of the 2002 Act.

6. At the First-tier Tribunal the claimant's representative accepted that she could not meet the requirements of the Immigration Rules and the appeal was pursued on the basis of article 8 ECHR only.

7. As there has been no appeal or cross against the part of the First-tier Tribunal decision dismissing the appeal on immigration grounds, that part of the decision stands unchallenged and, as explained at §11 of my error of law decision, the issue cannot be raised at this stage. The appeal must remain dismissed on immigration grounds.

8. Thus the matter came before me again on 22.10.15 for the remaking of the decision in the appeal, with the issues limited to whether there are compelling circumstances insufficiently recognised within the Rules so as to require the claimant to be granted leave to remain outside the Rules on the basis of private and/or family life pursuant to article 8 ECHR.

9. This approach was endorsed by the Court of Appeal in Singh v SSHD [2015] EWCA Civ 74, and again in SSHD v SS (Congo) & Ors [2015] EWCA Civ 387, where it was held that it is clear that whilst the assessment of Article 8 claims requires a two-stage analysis, and there is no threshold or intermediary requirement of arguability before a decision maker moves to consider the second stage, whether that second stage is required at all will depend on whether all the issues have been adequately addressed under the Rules. In other words, there is no need to conduct a full separate examination of article 8 outside the Rules where in the circumstances of a particular case, all issues have been addressed in the consideration under the Rules.

10. In SS (Congo) Richards LJ held that the appropriate general formulation was that an applicant for LTE had to show that compelling circumstances existed (which were not sufficiently recognised under the new Rules) to require the grant of such leave. It was a fairly demanding test, reflecting the reasonable relationship between the Rules themselves and the proper outcome of the application of article 8 in the usual run of cases, but it was not as demanding as the exceptionality or "very compelling

circumstances" test applicable in the special contexts explained in MF (Nigeria) v Secretary of State for the Home Department [2014] 1 WLR 544 (precariousness of family relationship and deportation of foreigners convicted of serious crimes). There could be no general proposition that leave to remain ("LTR") or LTE outside the Immigration Rules should only be granted in exceptional cases, however, in certain specific contexts, a proper application of article 8 might itself make it clear that the legal test for grant of LTR or LTE outside the Rules should indeed be a test of exceptionality. On the basis of the constant jurisprudence of the European Court of Human Rights itself, that was the case in relation to applications for LTR outside the Rules on the basis of family life (where no children were involved) established in the United Kingdom at a time when the presence of one or other of the partners was known to be precarious.

11. Before reaching any findings of fact or the conclusions to be drawn therefrom, I have carefully considered the evidence and submissions of the parties before me, including the claimant's consolidated bundle received by the Tribunal in compliance with the directions I issued in my error of law decision for a single, consolidated, paginated and indexed bundle of all objective and subjective material relied on by the claimant.

12. In particular I heard oral evidence from the claimant and her stepfather, relying on their respective witness statements dated 6.10.15, followed by the oral submissions of the representatives of the parties. Reliance was also placed by Mr Oremuyiwa on the skeleton argument at page 26 of the claimant's bundle.

13. The relevant background may be summarised briefly as follows. The claimant, now 24 years of age, first came to the UK at age 13 accompanied by her mother and brother in August 2005 on a visit visa. She failed to leave and thus became an illegal overstayer, though the blame for that largely lies with her mother. She attended school at public expense, and went on to obtain a university degree in Forensic Chemistry. She is unemployed and claims to have never worked in the UK. In 2012 she applied for leave to remain on the basis of private life, refused on 20.7.13. A request for reconsideration on the basis of private and family life representations resulted in the further refusal decision of 3.7.14, which is the subject matter of this appeal. The Secretary of State did not accept that she had lost all ties to Nigeria, having lived there approximately 13 years before coming to the UK.

14. The claimant is now an adult of 23 years of age. In her witness statement of 6.10.15 she asserts a family bond with her mother and brother in the UK and, since 2008, with her step-father Mr Adams, the partner of her mother, and a British citizen. He attended the appeal hearing and gave evidence in support of the claimant.

15. The claimant has referred to medical evidence that her mother is suffering from mental breakdown, diagnosed as persistent depressive disorder and post-traumatic stress disorder, and her stepfather suffers from hypertension. None of this evidence demonstrates that her presence is required or necessary, or that either of them relies

on her for practical or emotional support that cannot be provided by others or the state health care system.

16. It is alleged that the family left Nigeria because of violence perpetrated by her natural father, with whom she has long ago severed all links and the bundle contains a police diary extract and affidavit dated 16.5.05 asserting domestic violence. Pursuant to Tanveer Ahmed [2002] IAR 318 principles it is for the claimant to demonstrate that documents produced are reliable. I have some serious concerns about these Nigerian police and court documents as although they are both dated 16.5.05, the claimant's mother states in the affidavit: "That on the 5th of May 2005 I was in violent attacked by my husband which I was injured by my right kneel cap and my hand. That I spend more than 5 days in the Hospital." It would be impossible for the attack to have taken place on 15.5.05 and for the mother to have spent 5 days in hospital, since the affidavit claims on its face to have been sworn before the high court on 16.5.05. In the circumstances, I do not accept that these documents can be regarded as reliable and thus I find that the claimant has failed to establish that the family left Nigeria because of domestic violence. However, in the overall scheme of things, the precise reason for leaving Nigeria may not matter to any significant degree and I do not hold this against the claimant in any proportionality balancing exercise.

17. I take fully into account that the claimant asserts in her witness statement that she has no family or links remaining in Nigeria and that her family and private life is fully engaged in the UK. The claimant spent what she regards as her formative years in the UK and went on to successfully complete a university degree in Forensic Chemistry, funded by her stepfather. She has many friends and associates across her community.

18. The refusal decision accepts that the claimant will have enjoyed a level of private life due to the time she has remained in the UK. The Secretary of State considered that the claimant failed to demonstrate that she has no ties, including social cultural or family with Nigeria. Nor had she demonstrated that she had any significant private life connections to the UK that could not be maintained from abroad. Although the claimant asserted that she had lost all ties to Nigeria, given the amount of time she spent living in Nigeria before coming to the UK, the majority of her life and most of her formative years, the Secretary of State did not accept that social, cultural or family ties do not exist.

19. Further, the refusal decision states that whilst the claimant spent a number of her formative years in the UK, attending school and going on to further education and will have formed some ties in the UK that may make the impact on her private life the greater if she is removed, she failed to show that her ties in the UK go beyond the normal emotional ties of a close relationship with her mother and brother, both of whom have no leave to remain in the UK and would likely be returned to Nigeria, thereby making adapting to life in Nigeria a lot easier. She would also be able to take advantage of her school qualifications, degree and experience in the UK in seeking employment in Nigeria on her return. I take all of these matters into account.

20. I am not satisfied that any of the circumstances relied on, either individually or taken as a whole, in the round, can properly be described as sufficiently compelling to justify granting leave to remain outside the Rules.

21. Even if I were to go on to consider private and family life outside the Rules on the basis of an article 8 ECHR assessment, following the Razgar stepped approach, I would find, for the reasons set out herein, that the decision of the Secretary of State is entirely proportionate and not disproportionate to the rights of the claimant and/or her family members in the UK.

22. In relation to family life I am not satisfied that the relationship between the claimant and her mother, brother and stepfather, amount to any more than the normal emotional ties that one might expect from such relationships. Whilst she still lives at home, she is now an adult having spent a number of years at university and should be making her own way in the world, although still unemployed. It is increasingly common for family members to be spread across nations and even the world. Whilst such family members may still have tender affection for each other as part of the same family, that is not the sort of family life which engages the protection of article 8 ECHR so as to render separation unreasonable. If she has any family life with her mother and brother, they have no right to remain in the UK either and may well be returned to Nigeria, and thus their presence in the UK does not support the claimant's plea to remain in the UK. In the light of Kugathas, I am not satisfied that such family life as enjoyed by the claimant engaged article 8 at all, though it would be a relevant factor in support her private life claim.

23. I bear in mind that the claimant does meet the requirements of the Rules in relation to either family or private life in the UK,

24. Whilst the claimant cannot meet the requirements of paragraph 276ADE, that is not the end of the matter. The Immigration Rules, and in particular paragraph 276ADE, are the Secretary of State's proportionate response to private and family life claims, incorporated into the Rules since 9.7.12 and it is the test under paragraph 276ADE of family, social and cultural ties by which the proportionality of the decision should be considered in respect of private life. For applications made after 28.7.14 the test is now the very much more stringent one of "very significant obstacles to integration."

25. Even if going on to consider article 8 ECHR outside the Rules, it is highly relevant to any subsequent proportionality assessment, following the Razgar stepped approach, that the claimant does not meet the Rules. Any such assessment of proportionality has to be approached through the prism of the Rules.

26. The "new" Rules and Part 5A of the NIA Act 2002 seek to strike a "fair balance" between the competing interests under Art 8 and, in themselves, provide a persuasive statement about the relevant public interest consideration which a court or Tribunal must bring into account in striking the proper balance under Art 8. Albeit not in the context of deportation, in Haleemudeen v SSHD [2014] EWCA Civ 558, Beatson LJ at [40] said that the new Rules in Appendix FM:

> "... are a central part of the legislative and policy context in which the interests of immigration control are balanced against the interests and rights of people who have come to this country and wish to settle in it. Overall, the Secretary of State's policy as to when an interference with an Article 8 right will be regarded as disproportionate is more particularised in the new Rules than it has previously been."

27. As a consequence, the court or Tribunal is required to give the new Rules (at [47]): "greater weight than as merely a starting point for the consideration of the proportionality of an interference with Article 8 rights" (see also SSHD v SS (Congo) and Others [2015] EWCA Civ 387).

28. Proper weight has to be given to the judgment of the Secretary of State, as expressed in the Rules, regarding what is needed to meet the public interest which was in issue. The relevant requirements under the Rules are those of paragraph 276ADE. The claimant has not lived in the UK continuously for 20 years, and being over 18 but under 25 has not spent at least half her life living continuously in the UK. More significantly, the claimant could not demonstrate that she had, by the test applicable at the date of the Secretary of State's decision, lost all ties with Nigeria, including social, cultural or family. The newer test is more stringent and would require the claimant to demonstrate that there are very significant obstacles to integration in Nigeria. Again, the claimant has failed to demonstrate such very significant obstacles. It is asserted on her behalf that she has no family and nowhere to go to in Nigeria. However, article 8 does not create a right of home or accommodation or even employment for a person returning to their home country. There may be difficulties and challenges but having passed her majority five years ago, the claimant should now be making her own way in the world. Article 8 is not a shortcut to compliance with the Rules and an applicant's claim under article 8 is not strengthened by the degree to which she fails to meet the requirements of the Rules. The claimant spent the most of her formative years in Nigeria and will be better equipped to return by reason of her experience and education in the UK. She will not have any language barriers on return.

29. Further, in the proportionality balancing exercise I am required to have regard to the public interest considerations under section 117B of the 2002 Act, including that immigration control is in the public interest. More significantly, little weight is to be given to any private life developed in the UK whilst the claimant's presence was precarious and indeed mostly unlawful. Pursuant to Forman (ss 117A-C considerations) [2015] UKUT 00412 (IAC), in cases where the provisions of sections 117B-117C of the 2002 Act arise, the decision of the Tribunal must demonstrate that the public interest considerations have been given full effect.

30. It follows that I can attribute little weight to any private life developed by the claimant in the UK, including her relationship with her mother, brother and stepfather.

31. Putting all these factors together, considering the case in the round, I find, for the reasons set out above, that the decision of the Secretary of State was entirely proportionate and not disproportionate to the family and private life circumstances

of the claimant and her family members. The balance comes down in favour of removal.

**Decision:**

32. The appeal is dismissed on both immigration grounds and human rights grounds.

**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an anonymity order. Given the circumstances, I make no anonymity order.

**Fee Award** **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.

**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**