



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

Appeal Number: IA/31057/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 December 2014  
Determination prepared 26 December 2014**

**Determination Promulgated  
On 27 March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**and**

**MRS ABIKE CATHERINE ATIJOSAN-OJUEROMI  
(ANONYMITY ORDER NOT MADE)**

**Respondent**

**Representation:**

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer  
For the Respondent: Ms P Makunzua, Solicitor of Kimberly Wayne & Diamond  
Solicitors

**DECISION AND REASONS**

1. In this appeal the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.
2. The Claimant, a national of Nigeria, date of birth 20 April 1952, appealed against the decision of First-tier Tribunal Judge Fletcher-Hill (the judge) who on or about 22

April 2014 allowed the appeal against the Secretary of State's decision, dated 9 July 2013, to refuse to vary leave to remain and make removal directions.

3. The judge allowed the appeal under Article 8 of the ECHR. It was accepted that the Appellant could not succeed under the Immigration Rules, it would seem with reference to Appendix FM and paragraph 276ADE.
4. On 30 October 2014 I concluded that the judge's reasoning was not adequate and in particular the judge had made no reference to the issue of the public interest in the assessment of proportionality.
5. My conclusion stands notwithstanding the change in emphasis when assessing Article 8 outside of the Immigration Rules as demonstrated by the cases of *MF (Nigeria)* [2013] EWCA Civ 1192, *Nagre* [2013] EWHC Civ 720 (Admin), *Ganesabalan* [2014] EWHC 2712, *Singh* [2015] EWCA Civ 74 and *Ajila* [2014] EWHC 3763 (Admin), as iterated in *Oludoyi* [2014] UKUT 539.
6. It is of note that the judge heard a significant amount of evidence concerning the claims as to the availability of care or oversight or access to treatment the Claimant might obtain in Nigeria. The judge found that

"...Unfortunately there was neither up-to-date medical information concerning the Appellant's [the Claimant] current prognosis nor indeed any up-to-date evidence of her current medication and the stability of her condition."

(My parenthesis)

7. The judge found having regard to the considerations arising under paragraph 276ADE, reliant upon the version in being at the time that the Claimant still retained ties with Nigeria; the social, cultural or family ties. The judge found "she clearly does but they (her relatives) are reluctant to involve themselves." (My parenthesis)
8. The judge found the Claimant to be "a fragile and vulnerable individual who seems to rely heavily on her daughter, who is a healthcare professional, trained in mental health issues". The grounds of the Secretary of State did not challenge the judge's findings of fact nor is there any dispute to the judge's conclusion that the Claimant

"...appears not to be able to access any support network or indeed the medication which is crucial to her wellbeing and any interference in that medical care would not be proportionate."

9. For remaking the decision I had given directions that any further evidence relied upon should be served on the opposing party. At the hearing the Claimant sought to enlarge upon the lack of relations who would be willing to care for her, a lack of a business, as she had previously had before coming to the United Kingdom, to return to and the medication being taken for diabetes, high blood pressure and schizophrenia. The Claimant confirmed that she did not know if that treatment was available in Nigeria. The Claimant's daughter Modupe gave evidence and confirmed that when the Claimant was unwell she did not know what she was doing, the

Claimant was financially dependent on her and she repeated the difficulties likely to be faced on a return to Nigeria. She confirmed that certain living relatives in Nigeria had not made contact with the Claimant when she had last been there. The witness also confirmed her belief from searching, it was assumed the internet, the limitations of access in the Claimant's village to treatment and her concerns as to the effects of any relapse.

10. In considering whether the Secretary of State's decision was compliant with the European Convention on Human Rights I found that the Claimant has a private life of which her daughter forms part in the United Kingdom. I find that the effects of removal on the Claimant are likely to be significant. I find that the Secretary of State's decision is lawful and properly served purposes falling within Article 8(2) of the ECHR.
11. I do not find that there is adequate evidence to address the claimed comparative differences between mental health care and medical treatment available in Nigeria showing that it falls so far below the standard to be expected as to pose a risk to the Claimant's health or as to engage Article 3 ECHR.
12. It may well be that the medical services are not in the same class as available in the United Kingdom but that of itself does not entitle a person to remain here.
13. Evidence provided from the Country of Origin Information Report of June 2013, reissued 3 February 2014, dealing with mental health does not suggest that medication which the Claimant takes is not available either in terms of mental health requirements or for diabetes or high blood pressure.
14. In these circumstances cases such as *Akhalu (health claim: ECHR Article 8)* [2013] UKUT 400 noted the difficulty if an individual was to remain in the United Kingdom and require healthcare at public expense, which on the face would happen here, that plainly bears on the public interest in removal. Public interest is an issue identified as a matter of the case law relating to Article 8 in the assessment of proportionality but also arises under Section 117A and B of the Nationality, Immigration and Asylum Act 2002 as amended by the Immigration Act 2014.
15. The Claimant's problems on a return to Nigeria are not insignificant but I find in the light of the judge's unchallenged findings that the medical evidence is not sufficient to demonstrate that the appeal should succeed under Article 8 in relation to the Claimant's moral and physical integrity. Further, in relation to the issue of the Claimant's private life in the United Kingdom it is plain that she has had one and that part of her private life has been her contact with her daughter. I do attach very substantial weight to the public interest in removal and managing immigration control.
16. I take into consideration the judge's conclusions having heard the evidence as to the lack of an accessible support network or of ease of access to obtain the medication required and those were material considerations in the assessment of proportionality.

17. In this case I find that there is a consideration of what might be called common humanity is material to the assessment of the public interest in the Claimant's removal. In my judgment, applying as I do the case law of *Razgar* [2004] UKHL 27 and *Huang* [2007] UKHL 11 in this truly exceptional case of the hardships of the Claimant as a single woman aged 62 on her own returning to live without home, family support or care, trying to survive with significant mental health problems which although the public interest shows that the Respondent's decision is disproportionate.
18. The original Tribunal's decisions in relation to the Immigration Rules and in particular Appendix FM and paragraph 276ADE stands.

**NOTICE OF DECISION**

The appeal is allowed on Article 8 ECHR grounds.

**ANONYMITY ORDER**

No anonymity order was requested nor is one appropriate or necessary.

Signed

Date 23 March 2015

Deputy Upper Tribunal Judge Davey

**TO THE RESPONDENT**

**FEE AWARD**

A fee of £140 was paid. No fee award was made by the judge and none was requested on remaking the appeal.

Signed

Date 23 March 2015

Deputy Upper Tribunal Judge Davey