



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

Appeal Number: IA/32497/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 22 September 2015**

**On 25 September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PEART**

**Between**

**MRS LOVETTE MOJISOLA BOBITEY  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Fisher of Counsel

For the Respondent: Mr Kandola, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Nigeria born on 23 February 1957. On 30 September 2008 she made application for leave to remain on human rights grounds refused on 14 May 2009. On 26 July 2014 the appellant was served with form IS151A in terms of her liability to detention and removal to Nigeria.
2. The appellant's appeal against the respondent's decision was dismissed by Judge Barber (the judge) in a decision promulgated on 11 March 2015. The judge dismissed the appellant's claims under Articles 3 and 8. As regards Article 3, he found she did not meet the high threshold. As regards Article 8, he found the appellant did not satisfy the Rules and that her removal would not engage Article 8 although he said if he was wrong

in that regard then he was satisfied the interference was in accordance with the law and proportionate.

3. The grounds claimed the decision was made on an incorrect basis. That was because the judge said at [21] of his decision that the appellant was liable to deportation whereas it was a Section 10 removal.
4. Further, the judge erred as to the relevant legal test for the engagement of Article 8. See ground [5] which refers to [25] of the decision. The grounds claimed the judge confused the issue of the engagement of Article 8 and that undermined his overall assessment rendering the decision unsafe.
5. In any event, the grounds claimed the judge failed to properly conduct a balancing exercise under Article 8 in that he overlooked that the appellant's illness developed here which was relevant as she would not have planned the situation beforehand.
6. The grounds claimed the judge failed to attach appropriate weight to relevant issues, in particular that the appellant would have no family, financial, medical or social services care in Nigeria whilst all are available here.
7. Judge Osborne granted leave on 15 May 2015. Judge Osborne did not find the reference to deportation at [21] of the decision to be material but he found it was at least arguable at [25] that the judge confused the engagement of Article 8 with the breach of the appellant's rights under Article 8. It was from the appellant's point of view arguable that if the judge was confused upon that fundamental aspect of applying Article 8, his decision in relation to Article 8 was also confused.
8. There was no Rule 24 response.

### **Submissions on Error of Law**

9. Ms Fisher relied upon the grounds. She submitted that there was a qualitative difference between reciting facts and subjecting them to analysis. She drew my attention to **GS (India) [2015] EWCA Civ 40**. In particular at [85] and [86]. There was medical evidence at page 66 with regard to the appellant's risk of flying and page 68 with regard to a cardiology review which should have been subjected to analysis in terms of Article 8. The judge began his discussion from the wrong starting position. He needed to identify and resolve key issues and he erred in law because he failed to do so.
10. Mr Kandola submitted that it was clear the judge had in mind the appellant's circumstances and subjected them to analysis at [24] - [26] of the decision such that he did not err with regard to his findings or his dismissal of the appeal.

### **Conclusion on Error of Law**

11. I do find that the judge erred in referring to deportation rather than removal under Section 10 but that is not material.
12. I also find that the judge erred in confusing the engagement of Article 8 with the potential breach of the appellant's rights under Article 8. Clearly, Article 8 was engaged, the threshold is not high. **AG (Eritrea) [2007] EWCA Civ 801** at [28] per Sedley LJ:

“.....while an interference with private or family life must be real if it is to engage Article 8(1), the threshold of engagement (the ‘minimum level’) is not a specially high one. Once the Article is engaged, the focus moves as Lord Bingham’s remaining questions indicate, to the process of justification under Article 8(2). It is this which, in all cases which engage Article 8(1), will determine whether there has been a breach of the Article.”
13. In many cases the issue of substance will be the proportionality of the decision and the Court of Appeal has emphasised on a number of occasions that the assessment of proportionality must be properly and adequately reasoned. **DM (Zambia) [2009] EWCA Civ 474**.
14. The judge clearly erred when he said that because he found the grounds under Article 3 were not made out then removal of the appellant as a result of her medical condition would not constitute a ground under Article 8. It might not constitute a ground under Article 8 but then again, it could do so.
15. I do not understand what he said in that context that her medical condition .....*“must only be weighed in the balance.”*
16. Overall, I find there was no proper and adequate reasoning.
17. In my view, the judge made a material error of law. I find that the judge was confused regarding his approach to Article 8. The appeal must be re-heard de novo.

### **Notice of Decision**

18. The decision of the First-tier Tribunal contains errors of law, is set aside and shall be remitted to the First-tier Tribunal for re-hearing.

Anonymity direction not made.

Signed  
2015

Date                      22                      September

Deputy Upper Tribunal Judge Peart