



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/14913/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 22 February 2016**

**Decision & Reasons
Promulgated
On 4 March 2016**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**VERAH ADAMU DAVID
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A. Brocklesby-Weller, Home Office Presenting Officer
For the Respondent: Mr J. Waithe, counsel, instructed by Greenland Lawyers

DECISION AND REASONS

1. The Respondent, who was born on 4 May 1984, is a national of Nigeria. She was granted a multi entry visitors visa on 23 September 2004 and entered the United Kingdom on 6 October 2004. In 2005 she applied for further leave to remain as a student but this application was refused. She

last entered the United Kingdom on 15 May 2006 and her multi-entry visa expired on 23 September 2006.

2. She did not depart when her visa expired but remained in the United Kingdom, living with her mother, who is a British citizen. On 24 May 2011 the Respondent applied for leave to remain outside the Immigration Rules on the basis of her relationship with her mother. This application was refused on 23 June 2011 and she applied for this decision to be reconsidered on 6 September 2011 under Article 8 of the European Convention on Human Rights.
3. The Respondent was served with an IS151A on 18 November 2014. She completed a statement of additional grounds on 8 December 2014.
4. She married Thomas Duckmanton, who is a British citizen, on 14 February 2015 and on 24 March 2015 the Appellant refused her application for leave to remain and decided to remove her from the United Kingdom under section 10 of the Immigration and Asylum Act 1999. The Respondent appealed against this decision on 14 April 2015.
5. First-tier Tribunal Judge Smith allowed her appeal on 10 September 2015 and the Respondent appealed against this decision on 18 September 2015. Designated First-tier Tribunal Judge Manuel granted the Respondent permission to appeal on 22 January 2016 and the Respondent filed a Rule 24 response on 19 February 2016.

Error of Law Hearing

6. The Home Office Presenting Officer said that she relied on the Appellant's grounds of appeal and submitted that requiring the Respondent to return to Nigeria in order to apply for entry clearance would not amount to a disproportionate disruption of her family life. She noted that the Foreign and Commonwealth Travel Advice, submitted at the appeal hearing had not said that it was unsafe to travel to Abuja and Lagos and the First-tier Tribunal Judge had not engaged with this. She also noted that the First-tier Tribunal Judge had not referred to the Visa Processing Times document submitted by the Secretary of State for the Home Department at the appeal hearing. This stated that, as of July 2015, 100% of applications for settlement visas made in Ajuba were processed within 60 days. Instead, he had stated in paragraph 25 of his decision that he was satisfied that requiring the [Respondent] to return to Nigeria for an unspecified time was not proportionate.
7. Counsel for the Respondent then replied. He stated that he was relying on his skeleton argument and submitted that there were no material errors of law in the First-tier Tribunal Judge's decision. He noted that it was too dangerous for the Respondent's husband to travel to Nigeria with her and that the Foreign and Commonwealth Officer Travel Advice referred to kidnappings and threats in Abuja and Lagos.

Error of Law

8. Counsel for the Respondent was correct to submit that she had a partner in the United Kingdom for the purposes of GEN.1.2 of Appendix FM to the Immigration Rules, as she had married her British husband on 14 February 2015 and she did not have to establish that she had also lived with him for at least two years. But it was not argued by the Respondent that she was entitled to leave to remain under Appendix FM. This was because, as an overstayer since 2006, she could not meet the immigration requirements and also because she had not established that there were insurmountable obstacles to her enjoying a family life with her husband in Nigeria.
9. However, as Appendix FM did not include consideration of the question whether it would be disproportionate to expect an individual to return to her home country to make an entry clearance application to re-join her husband, the First-tier Tribunal Judge was correct to consider whether requiring her to do so would amount to a breach of Article 8 of the European Convention on Human Rights.
10. The First-tier Tribunal Judge also correctly reminded himself of the case of *R (on the application of Chen) v Secretary of State for the Home Department* (Appendix FM-Chikwamba- temporary separation-proportionality) IJR [2015] UKUT 00189 (IAC) in paragraph 14 of his decision. This case held that there may be cases in which there are no insurmountable obstacles to family life being enjoyed outside the UK but where temporary separation to enable an individual to make an application for entry clearance may be disproportionate. Reading the decision in its entirety it is clear that the Judge then considered the appeal in this context.
11. The Appellant's grounds of appeal were very narrow and the Appellant did not seek to amend them at the error of law hearing. In particular, they say that the First-tier Tribunal Judge erred in fact in paragraph 25 of his decision and that this undermined his legal finding that he could distinguish the case of *Chen*.
12. In paragraph 25 of his decision the First-tier Tribunal Judge found that "should the [Respondent] return to Nigeria her husband will not be able to visit her following clear Foreign Office advice". This Foreign Office Advice was at pages 137 - 148 of the Bundle prepared by the Respondent for her appeal hearing. At page 137 it was said that "there is a high threat from terrorism" and that visitors should "avoid public places where crowds gather and areas where there are political or other large public gatherings" and that they should "be vigilant, remain alert and pay attention to [their] surroundings at all times". There was also mention of an explosion in Lagos which killed five people and a further attack in Abuja which killed 23 people.
13. In addition, at page 141 of the bundle it stated that there had been significant attacks in Abuja and Lagos and at page 144 it was said that "violence can erupt quickly and without warning" and that "inter-communal violence can occur throughout Nigeria". At page 146 it was

also said that visitors “should ...limit road travel at night as far as possible, including in Lagos” and that “where feasible....should avoid going out at night in Lagos and follow the security guidance offered by employers or hosts”.

14. Furthermore, the First-tier Tribunal Judge started his findings in paragraph 25 by stating that “I am satisfied having considered all the evidence in the round that requiring the [Respondent] to return to Nigeria for an unspecified time is not proportionate”. This indicated that he had taken other evidence into account. This would have included the Respondent’s husband witness statement, in which he said at paragraph 9 that “the situation within Nigeria is presently dangerous, especially for a white European Christian....For Boko Haram Christians are commonly the target of attacks, as are any individuals seen to represent Western education. As a white Western educated Christian, I would be a standout target”. At paragraph 20 of his decision the First-tier Tribunal Judge also explicitly noted that, when the Respondent’s husband was asked by the Home Office Presenting Officer at the appeal hearing whether he would travel to Nigeria with the Respondent, he said that he would not do so. The first reason he gave for not doing so was the risks he would face in Nigeria, which was partly based on the Foreign and Commonwealth Office’s advice.
15. Therefore, looking at the decision as a whole I find that the Judge did not make an error of fact, which undermined his legal decision making, in paragraph 25 of his decision. The advice went further than naming the cities and states to which no travel should be undertaken or only essential travel should be undertaken and the Judge was entitled to take this and the Respondent’s husband’s evidence into account. The Judge also made clear in paragraph 25 that he had reached his decision after considering all of the evidence before him, which would have included the Travel Advice in its entirety.
16. The Appellant’s second ground of appeal was that in paragraph 24 of his decision the First-tier Tribunal Judge had speculated on the outcome of any application for entry clearance. The Home Office Presenting Officer submitted that the Judge had not engaged with the Visa Processing Times document but at paragraph 24 of his decision the Judge explicitly noted that the Home Office Presenting Officer “presented evidence that that visas are dealt with in a maximum of 60 days from receipt”.
17. It was clearly open to the Judge to consider whether, even if the application were to be considered within this timescale, it may be refused and the Respondent may have to appeal. This was a relevant factor to take into account when considering whether, in the light of the judgment in *Chen* and the reasoned decision by the Respondent’s husband not to accompany her to Nigeria, their temporary separated would be disproportionate. I find that is was not mere speculation.
18. The narrow nature of the grounds put forward by the Appellant indicate that she was only concerned about the approach taken by the First-tier Tribunal Judge to the Foreign and Commonwealth Office Travel Advice and

the Visa Processing Times documents. She did not assert that the Judge had not taken into account all other relevant factors or made any other errors of law when reaching his decision and I can only consider whether the Judge made a material error of law in the light of grounds placed before me.

Decision

1. I dismiss the Appellant's appeal.
2. First-tier Tribunal Judge Smith made no material errors of law and, therefore, I uphold his decision to allow the Respondent's appeal against the Secretary of State for the Home Department's decision to refuse her leave to remain and to remove her from the United Kingdom.

Signed

Date: 25 February 2016

Nadine Finch

Upper Tribunal Judge Finch