



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

Appeal Number: IA/20870/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 6th May 2016

On 18th May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

MS FLORENCE SURAKAT
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

- 1.** This is an appeal against the decision of First-tier Tribunal Judge Beach promulgated on 19 August 2015, in which she dismissed the appellant's appeal.

2. Permission to appeal was granted by Upper Tribunal Judge Bruce on 11 March 2016.

Anonymity

3. No direction has been made previously, and there is no reason for one now

Background

4. The appellant's claim is that she arrived in the United Kingdom as a visitor during 2001 at the age of 15. She first applied for leave to remain on 3 March 2010, shortly before giving birth to her first child. A further application made in 2010 was rejected and a third application was refused with no right of appeal. During 2013, the appellant's second child was born. On 24 April 2014, the Secretary of State reconsidered the appellant's application and that of her family at the request of her previous advisors.
5. The Secretary of State refused the said application because it was considered that the appellant failed to satisfy the eligibility requirements of Appendix FM because her partner and children were ineligible because they are Nigerian nationals with no leave to remain in the United Kingdom and the children had resided in the United Kingdom for less than 7 years. Consideration was also given to the appellant's private life under paragraph 276ADE of the Rules, exceptional circumstances and section 55 of the Borders, Citizenship and Immigration Act 2009, with the Secretary of State concluding that the appellant did not qualify for a grant of leave to remain. It was particularly noted that there was no evidence of the appellant's claimed residence in the United Kingdom since 2001 and that the health conditions mentioned in the application could be treated in Nigeria.
6. The appellant appealed to the First-tier Tribunal. The grounds argued that the appellant was relying on paragraph 276ADE(vi) based on her claim that she was brought to the United Kingdom aged 12 and was now aged 28.

The hearing before the First-tier Tribunal

7. The appellant and her partner gave evidence at the hearing. The judge did not accept that the appellant and her partner had no ties, contacts or family in Nigeria or that there were significant barriers to the appellant's integration. Her appeal under Article 8, outside the Rules, was also dismissed.

The grounds of appeal

8. The handwritten grounds of appeal to the First-tier Tribunal, argued, *inter alia*, that the judge erred as to the date of the Secretary of State's decision; that the judge ignored evidence to substantiate the appellant's claim that she entered the United Kingdom in 2001 at the age of 15 and

that the judge showed bias in referring to the appellant's friends as people of "*Nigerian descent*." The renewed grounds made similar points.

- 9.** While the appellant did not accept that her application to the Upper Tribunal was late, she explained that owing to the Christmas postal delays, she had not received it until 4 January 2016. I note that it is dated 5 January 2016, albeit the Upper Tribunal stamped it as received on 20 January 2016. The judge granting permission did not comment on the timeliness issue.
- 10.** Permission to appeal was, ultimately, granted on the basis that the appellant's loose- leaf documents might have been overlooked, but that it would be for the appellant to demonstrate that these documents were before the judge and that any omission was material to the outcome.
- 11.** The Secretary of State's response of 4 April 2016 indicated that the appeal was opposed and reiterated the points made by Upper Tribunal Judge Bruce in the grant of permission to appeal.

The error of law hearing

- 12.** The appellant attended the hearing in person and relied upon her grounds of appeal. I advised the parties that the documents in question were attached to the correspondence pin on the file and appeared to me to have been received by the First-tier Tribunal shortly after the appeal was lodged on 6 May 2014. These documents dated from 2001 onwards and comprised of a record of the appellant's schooling and qualifications in the United Kingdom.
- 13.** Mr Bramble accepted that this evidence had not been taken into consideration by the judge, but argued that it would have made no difference to the outcome of the appeal. He said that the appellant had still to attain 20 years residence and would need to show that there were very significant obstacles to her integration in Nigeria. Mr Bramble relied on the judge's finding that the appellant's friends were of Nigerian heritage and she would have their support on return to Nigeria. In terms of the proportionality assessment, he argued that the appellant had overstayed since entering the United Kingdom as a child and it would not materially change the outcome.
- 14.** In response, the appellant complained that at the time her application for leave to remain had been reconsidered by the Secretary of State, she had acquired 14 years' residence in the United Kingdom. As for her friends, these were people she had met in the United Kingdom who were born in this country and British citizens of Nigerian background. She said that it was unfair that the judge had not asked her if her friends could assist her to integrate in Nigeria. The appellant stressed that she had been brought

to the United Kingdom as a minor; that she had no family in Nigeria and that when she met her husband he had leave to remain. She is aggrieved that she was not permitted to be a dependent on her husband's former status. In terms of her overstaying, the appellant stressed that she applied to regularise her stay in 2010 because she wanted her own children to avoid the hardships she faced growing up in the United Kingdom.

Decision on Error of Law

- 15.** The judge erred in failing to note and consider an extensive quantity of photocopied documents submitted by the appellant, which were erroneously attached to the correspondence pin on the IAC case file. Those documents provided an account of the appellant's early years as well a chronology of her education in the United Kingdom supported by documentary evidence including the appellant's GCSE certificates. I also find some merit in the appellant's complaint regarding the judge's comments about the ability of her friends to assist her to reintegrate in Nigeria, about which she was not invited to respond at the hearing. These errors were material for the following reasons.
- 16.** Firstly, the judge's findings at [37] take issue with the lack of documentary evidence "*to show that the appellant attended secondary school and College in the UK;*" that the judge "*would have expected to see some evidence confirming her time in the UK*" and "*she may not have lived here since the age of 15 given the lack of documentary evidence to support this assertion.*" I find that the repeated references to the lack of evidence which ought to be available combined with the judge's rejection of the appellant's claim that she was brought to the United Kingdom as a minor, lead me to the conclusion that these issues were pertinent to the judge's overall conclusions and had this information been noticed and considered by the judge, the outcome may not have been the same.
- 17.** Secondly, the appellant's friends, all young people like the appellant, who wrote letters in support, provided copies of their passports showing that they were British citizens, some of whom were born in the United Kingdom. The judge's finding that these friends would be able to assist the appellant in integrating was based on an assumption rather than the evidence. Had this point been put to the appellant during the hearing, she would have been able to state, as she did before me, that these people were no better placed than she in terms of being able to assist with her integration in Nigeria.
- 18.** Mr Bramble made no submissions as to the timeliness of the application to the Upper Tribunal. I consider that the appeal was most likely brought in time, given the delays with the Christmas post at the time the refusal of permission from the First-tier was sent as well as when the appellant sent her application to the Upper Tribunal. However, if am wrong in this, time for appealing is extended in view of the fact that any delay was short,

there are minor children affected by this decision; the respondent does not claim any disadvantage and the appellant was and remains unrepresented in these proceedings.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside, in its entirety.

The appeal is remitted to the First-tier Tribunal for a hearing in front of any judge except Judge Beach.

Signed
Deputy Upper Tribunal Judge Kamara

Date: 13 May 2016

