



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

Appeal Number: HU/02779/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9 November 2017**

**Decision & Reasons  
Promulgated**

**On 29 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

**Between**

**MS GRACE ADENIKE LUCAS  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: In Person

For the Respondent: Mr P Nath, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Nigeria. She was born on 8 October 1959. She first came to the United Kingdom on 29 November 2006 as a visitor and has remained in the United Kingdom as an overstayer from the time her leave as a visitor came to an end. On 10 September 2015 she made an application for leave to remain in the United Kingdom on the basis of family life as the partner of a British citizen, and private life. The Secretary of State refused her application by way of a decision dated 5

January 2016. The appellant appealed against the respondent's decision to the First-tier Tribunal.

### **The appeal to the First-tier Tribunal**

2. In a decision promulgated on 24 April 2017 First-tier Tribunal Judge FitzGibbon QC dismissed the appellant's appeal. The First-tier Tribunal found that the appellant did not meet the requirements of the Immigration Rules and that there were no features to make it necessary to consider the case outside of the Immigration Rules.
3. The appellant applied for permission to appeal against the First-tier Tribunal's decision. On 7 June 2017 First-tier Tribunal Judge Baker refused to grant permission to appeal. The appellant renewed her application for permission to appeal to the Upper Tribunal and on 14 September 2017 Upper Tribunal Judge Plimmer granted the appellant permission to appeal.

### **The hearing before the Upper Tribunal**

4. The grounds of appeal are that the First-tier Tribunal Judge, having accepted that the appellant and her partner were truthful and honest witnesses, made contradictory findings in dismissing the appeal despite being made aware of overwhelming difficulties that the appellant and her partner would face even during a short trip to Nigeria. It was contradictory for the judge to have then not accepted their account of the serious issues posed by a return to Nigeria. The grounds of appeal also assert that the appellant is aware that the respondent has a ten year partner route available to persons in her situation who do not meet all the requirements of the Rules but have no suitability issues and consequently she expected to be considered under the ten year provision.
5. The respondent submitted a Rule 24 response arguing that there was no error of law in the First-tier Tribunal's decision. The judge, at paragraph 14, found that he was not satisfied that the appellant and her partner's worries meant that return would entail very serious hardship and also found that they appeared able to overcome any difficulties that her return might cause.
6. At the beginning of the hearing I explained the procedure to Ms Lucas and invited her to make submissions as to why the First-tier Tribunal's decision contained an error of law. Ms Lucas submitted that she told the judge that there would be significant troubles facing her if she were to have to go back to Nigeria and that she would have to start all over again. She also submitted that her partner had told the court that he was unable to finance the trip for her to go to Nigeria to make an application.
7. Mr Nath asked the Tribunal to take into consideration that the appellant came to the United Kingdom in 2006 as a visitor and overstayed. He referred to paragraph 13 of the First-tier Tribunal decision and said the judge considered the Rules appropriately. The judge made findings as to

whether or not the appellant would face serious hardship and found that she would not. He referred to paragraph 11 of the decision and indicated that the evidence before the judge was not that the appellant's partner could not finance the trip. The evidence was that the appellant's partner was concerned about the expense of the move and that it would take up all his savings which were not substantial. In any event he indicated that the cost of the appellant returning to Nigeria is not a factor that would indicate that she would face very serious hardship in Nigeria.

## **Discussion**

8. The First-tier Tribunal Judge in this case found that the appellant and her partner were truthful witnesses. The First-tier Tribunal found:
9. The judge summarised the evidence which was not disputed at paragraph 8. At paragraph 10 the judge set out the evidence as:
  10. As for returning to Nigeria, the appellant maintains that she has no home or the prospect of employment there. She told me that she used to have a small business supplying materials for the building trade. Although she has maintained contact with her work colleagues, she does not think she could restart it as economic conditions have changed. She has three grown up children there, but they rely on financial support from Mr Ajose. Although she has not heard from her husband in many years, she has residual concerns that he may make life difficult for her in Nigeria - but that she could not give a reason for having those concerns.
  11. Mr Ajose though originally from Nigeria, has been a British citizen since 1991. He is unwilling to move to Nigeria. He has no home there and does not want to sacrifice his job here, or lose contact with his children. In cross-examination, he said that his greatest concern was the expense of a move, as it would take up all of his savings, which were not substantial. He was not sure about the possibility of the appellant returning temporarily to make an application from Nigeria; he preferred her to stay with him, but he acknowledged that nothing prevented her from applying from abroad.
10. The judge then considered the evidence and made the following findings:
  14. In my view, the difficulties which the appellant and Mr Ajose foresee for themselves in Nigeria are real, with the exception of the feared reappearance of the appellant's husband, which was speculative. However, I am not satisfied that their worries mean that return would entail 'very serious hardship' for either of them, but would fall short of that level of hardship. They appeared able to overcome any difficulties that her return might cause. The evidence that they have given does not persuade me that it would be unreasonable for them to be expected to continue their relationship in Nigeria, without undue hardship.
  15. For the private life claim, similar considerations apply. Unless the appellant can show that there would be 'very significant obstacles' to integration in Nigeria, she cannot avail herself of paragraph 276ADE of the Immigration Rules. In my view, she cannot show that this is the case: she has family members there, she has colleagues from her previous employment, and she

has spent the first 47 years of her life living there. She has not lost her family, social and cultural ties. This application must fail.

11. It is clear that the judge considered that the difficulties that the appellant had said she would face would not entail very serious hardship for the appellant or her husband. The appellant's husband has adult children in the UK but the appellant also has adult children in Nigeria. This is not a case of the judge not accepting the appellant's account (apart from the feared reappearance of the appellant's husband). The case turns on whether or not the circumstances amounted insurmountable obstacles to family life continuing outside the UK or very significant obstacles to integration in Nigeria for the appellant under 276ADE.
12. Regarding insurmountable obstacles the test is a stringent one and represents a high hurdle to be overcome. As found in **Agariko & Others (on the application of) v SSHD [2015] EWCA Civ 440**:
  45. By virtue of paragraph EX.1(b), "insurmountable obstacles" are treated as a requirement for the grant of leave under the Rules in cases to which that paragraph applies. Accordingly, interpreting the expression in the same sense as in the Strasbourg case law, leave to remain would not normally be granted in cases where an applicant for leave to remain under the partner route was in the UK in breach of immigration laws, unless the applicant or their partner would face very serious difficulties in continuing their family life together outside the UK, which could not be overcome or would entail very serious hardship.
13. The judge had the benefit of seeing and hearing the appellant and her husband giving evidence. The judge considered all the relevant evidence and correctly applied the law. On the facts of this case the conclusion reached by the judge was one that was open to him.
14. With regard to obstacles to integration into Nigeria the judge could not have reached a different conclusion given that she has family members there, she has colleagues from her previous employment, and she has spent the first 47 years of her life living there.
15. The evidence regarding the financial position of the appellant's husband was that his greatest concern was the expense of a move, as it would take up all of his savings not that he could not fund the appellant's fare home. In any event this would not amount very significant obstacles to the appellant's integration in Nigeria.
16. In this case the appellant has been in the UK unlawfully for a considerable period of time. She entered into the relationship with her husband whilst she was here unlawfully.
17. The decision of the First-tier Tribunal did not contain a material error of law.
18. No anonymity direction is made.

**Notice of Decision**

The decision of the First-tier Tribunal did not contain a material error of law. The appellant's appeal is dismissed.

Signed P M Ramshaw

Date 23 November 2017

Deputy Upper Tribunal Judge Ramshaw