Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/21754/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24 August 2017	**On 25 August 2017**

Before
UPPER TRIBUNAL JUDGE JORDAN

Between

Justina Okaro

Appellant

and

The Secretary Of State For The Home Department

Respondent

Representation:
For the appellant: Mr F. Khan, Counsel, instructed by Edward Marshall Solicitors
For the respondent: Mr L. Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria who was born on the 22 February 1953. She is now 64 years old. She appeals against the determination of First-tier Tribunal Judge Mailer promulgated on 21 November 2016 dismissing her appeal against the respondent's decision to refuse her application made in the United Kingdom for leave to remain.

2. The appellant entered the United Kingdom in March 2004, aged 51 on a family visit visa valid from 24 March 2004 until 24 March 2006. She has never left. Instead, she has remained with her son (whom I shall refer to as Stanley) in the United Kingdom. Stanley is settled here. It might well be inferred this was the true purpose of the original entry.

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3. The First-tier Tribunal Judge accepted that she was married in 1981 and that the couple had four children of whom only Stanley lives in the United Kingdom. Unfortunately, her husband abandoned her with their children. All are now adults.

4. Her son, Stanley, went through a traditional marriage in early 2013, some three months before the birth of his child, X. The child's mother, Precious, is now separated from Stanley. Both Precious and Stanley work and the appellant plays a significant role in her grandson's care.

5. On these basic facts, there is simply no basis upon which the appellant is entitled to remain under the Immigration Rules on human rights grounds or on any other basis. It goes without saying that her grandson is attached to her. It is also accepted that she participates fully in the childcare arrangements for him. Similarly, she maintains a close relationship with her son who supports her. That said, she is an overstayer who does not fulfil the requirements of the Rules which might enable her to remain either as a dependent relative or as a carer for her grandson. There is nothing exceptional about her position.

6. When the last of her own parents, her mother, died in Nigeria in 2003, a few months before her arrival in the United Kingdom, the appellant felt able to join her son in the United Kingdom. The Judge accepted she became separated from her husband. Coming to the United Kingdom was an understandable arrangement. It became even more so when X was born in 2013. Unfortunately, the arrangement was also unlawful.

7. It was part of the appellant's case that, notwithstanding that she has a sister in Nigeria and that her father had many siblings and the appellant herself has three children in Nigeria, she claimed that her relationship with all of these members of her family had failed such that they were unable to provide her with any support were she to return to Nigeria. Her principal reason for saying this appears to have been that as a result of her coming to the United Kingdom her children had become estranged from her because she had exercised a preference in favour of her son in the United Kingdom. On its face, given her situation in Nigeria and her son's willingness to take over the burden of providing for her, there was no apparent reason why her other children would regard the move as an act of disloyalty. Many families would have regarded the choice as a sensible one. Her son was in comfortable circumstances and apparently able to support his mother.

8. The First-tier Tribunal Judge did not accept the appellant's claim to have become estranged from her many relatives in Nigeria. However, he accepted much of the evidence that had been provided to him about the appellant's circumstances in the United Kingdom and what had occurred to her in Nigeria prior to her departure.

9. In paragraph 129 of his determination, the judge found the appellant's evidence to be '*essentially credible*'. This follows a passage in which he had described the appellant's circumstances in the United Kingdom and the role that she played in looking after her grandson. He accepted that the appellant was told by a friend that her husband had formed a relationship with another woman and had left home. In other words, the judge accepted that the appellant could not return to the support of her husband.

10. The judge then went on to deal with the relationship she presently had with her children in Nigeria. He noted that in her witness statement she had made no reference to her children having washed their hands of her. That was asserted, somewhat surprisingly, for the first time in her son's statement. The judge noted that her son had provided no reasons why this rupture had occurred. He had not provided evidence as to how he had become aware of the information which was necessarily information obtained from others. It was, apparently, a matter of conjecture. Consequently, in paragraph 133 of his determination, the First-tier Tribunal Judge properly and reasonably concluded that he did not accept she had lost contact with her children in Nigeria or that she would have nobody to return to.

11. Importantly, however, in paragraph 137 of the determination, the judge went on to consider the position even if she were estranged from her children. He properly recorded that she had lived in Nigeria over 50 years. She had been employed prior to coming to the United Kingdom. She had undertaken no research as to whether or not they would be employment opportunities for her in return. He reasonably concluded, therefore, that even if there would be difficulties in obtaining employment, they would not amount to obstacles sufficient to prevent a return. He reasonably concluded that she would have developed relationships, including with friends, before she left Nigeria and that she had therefore failed to establish she was unable to obtain adequate emotional and financial assistance or support on return to Nigeria.

12. These findings are all entirely sustainable. They make good sense. They were findings of fact properly open to the judge.

13. They are, however, the subject of criticism in the grounds of appeal addressed to the First-tier Tribunal. There is nothing in the point that the appellant's removal would violate the human rights of her grandson or that the decision was made without proper regard to s. 55 of the Borders, Citizenship and Immigration Act 2009.

14. The central feature of the grounds is that there is a fundamental inconsistency between the judge's finding in paragraph 139 that he found the appellant's evidence to be essentially credible and his finding of fact discrediting her evidence that she had lost contact with her relatives in Nigeria. There is nothing inconsistent with these findings.

The judge makes it perfectly clear what part of the evidence he accepted and what part of the evidence he rejected. Similarly, it was properly open to the judge to conclude that the appellant had not lost all social, cultural and family ties in Nigeria which she had acquired in the preceding 50 years. Suffice it to say that the criticisms made in the grounds of appeal are no more than an attempt to re-argue the judge's findings, all of which are sustainable.

15. In the second set of grounds directed to the Upper Tribunal much of the same criticisms are repeated. In a hearing before me, Mr Khan focussed on the claimed inconsistency between the judge's comments in paragraph 129 that he found the appellant's evidence to be essentially credible and the judge's later rejection of the claim that the appellant was estranged from her children in Nigeria. No discernible inconsistency exists. The findings are clear.

16. However, as I have earlier stated, this is something of a red herring. The First-tier Tribunal Judge made sustainable alternative findings '*even if*' the appellant had become estranged from her children. Further, I observe that even if the appellant had no children in Nigeria, even if she had no sister in Nigeria, even if she had no other family members, there is no violation of her human rights were she to be returned to the country in which she has lived. Parents die, husbands may become separated from their spouses, children may move away; there is no absolute obligation under the Human Rights Act requiring a host state to admit a parent in order to join her adult son in the United Kingdom. The evidence was that her son provided her with support and there is no reason why he would not continue to do that, whatever he might have said. For these reasons this claim was always bound to fail. Mothers in the position of this appellant may understandably wish to settle in the United Kingdom to be with an adult child and grandchildren. However, they have no right to do so unless the Rules permit such a category of entrance and the individual meets the requirements of the Rules in that capacity. This appellant has never established a right to remain under the Rules and her circumstances are no different from many others in her position and of a similar age. The circumstances do not merit an exception.

DECISION

The First-tier Tribunal Judge made no error on a point of law and the original determination of the appeal shall stand.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
24 August 2017