Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08858/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 April 2018	**On 23 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

TEMITOPE ELIZABETH SORINALA
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Alexander, Counsel instructed by Visa Inn Immigration Specialists
For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 17 April 1988. She is appealing against the decision of First-tier Tribunal Judge Herlihy promulgated on 18 October 2017 whereby her appeal against the respondent's decision dated 14 March 2016 to refuse her application for leave to remain in the UK on the basis of her family and private life was dismissed.

© CROWN COPYRIGHT 2018

Background

2. The appellant entered the UK on 23 September 2010 as a Tier 4 student. She was subsequently granted further leave until 17 October 2016. Her leave was curtailed, expiring on 13 April 2015, because she had ceased studying and the University of Kent withdrew its sponsorship of her. The appellant claims the curtailment notice was not sent to her and is not valid.

3. On 10 October 2015 the appellant applied for leave to remain in the UK on the basis of her relationship with her partner. On 14 March 2016 the respondent refused the application. It was not accepted that the appellant was in a genuine and subsisting relationship with her claimed partner.

Decision of the First-tier Tribunal

4. The judge found that the appellant was in a genuine and subsisting relationship with her partner.

5. The judge considered whether the requirements of Appendix FM of the Immigration Rules, under the partner route, were satisfied, and found that they were not as the application was made whilst the appellant did not have lawful leave and the financial requirements under the Rules were not met.

6. In addition, the judge, applying section EX.1(b) of Appendix FM, considered whether there were insurmountable obstacles to the relationship continuing in Nigeria. The judge gave several reasons for finding that there were no such obstacles. Firstly, although the appellant’s partner has two British children, the judge found that the evidence did not show he has a subsisting relationship with them or even sees them. Secondly, the judge noted that the appellant and her partner are both Nigerian citizens with strong cultural and family ties to the country. Thirdly, the judge observed that the appellant had spent her formative years in Nigeria and has a continuing relationship with her parents who reside there.

7. The judge assessed the appellant’s human rights claim outside the Immigration Rules under Article 8 ECHR. In refusing the appeal, the judge, applying section 117B of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”), gave substantial weight to his finding that the appellant’s family and private life developed at a time when her immigration status was precarious. The judge also found that the appellant has been in the UK unlawfully since April 2015 when her leave was curtailed.

Grounds of Appeal and Submissions

8. The grounds of appeal submit that the purported curtailment of the appellant’s leave in April 2015 was not valid because notice was not given to the appellant. On this basis, the argument is made that the judge erred

in finding that the appellant's application was made at a time when she did not have leave to remain.

9. Before me, Mr Alexander argued that the judge erred by failing to deal with the issue of curtailment. He maintained it was an important issue which, if it had been addressed, would have affected the outcome.

10. Ms Willocks-Briscoe's response was that even if the appellant had leave when the application was made, her immigration status was precarious and therefore the relationship would in any event have been given little weight.

Analysis

11. One of the contentions made by the appellant before the First-tier Tribunal was that her leave was not lawfully curtailed and therefore she had valid leave when her human rights application was made. I agree with Mr Alexander that the judge did not address the curtailment issue at all and that the judge found that the appellant has been in the UK unlawfully since April 2015 without giving any reasons why the appellant's argument to the contrary was rejected. However, whilst I accept that the judge fell into error in respect of the curtailment issue I do not accept that the error was material.

12. The issue that was before the judge in respect of the Immigration Rules was whether, in accordance with paragraph EX.1(b) of Appendix FM, there were insurmountable obstacles to family life between the appellant and her partner continuing in Nigeria. The judge gave several reasons, none of which have been challenged, for finding there would not be insurmountable obstacles. For the reasons given by the judge (which are summarised above at paragraph 6) this conclusion was undoubtedly open to him. The appellant's immigration status did not form part of the judge's reasoning about the absence of insurmountable obstacles and therefore, even if the judge was incorrect to find that the appellant has been in the UK unlawfully since April 2015, this was not material to whether EX.1(b) was met.

13. I turn now to Article 8 ECHR outside the Immigration Rules. One of the main reasons the judge did not allow the appeal was that the appellant's immigration status was precarious in 2012 when she commenced the relationship with her partner and there were no exceptional circumstances to warrant allowing the appeal outside the Rules.

14. The difficulty for the appellant is that even if she is correct that her immigration status did not became unlawful in 2015 this would have made no difference to the judge's conclusion about Article 8, which is based on the appellant's immigration status being precarious when the relationship was entered into (which it undoubtedly was). It was the precariousness of the status when the relationship commenced that the judge placed weight

on, not that several years later the appellant's status changed from being precarious to unlawful.

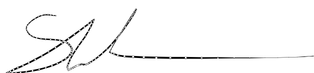
15. Accordingly, I am satisfied that the judge, for the reasons he gave, reached a decision that was open to him and the same decision would have been reached irrespective of whether the judge considered that the appellant's status since April 2015 had been precarious or unlawful.

Decision

16. The appeal is dismissed.

17. The decision of the First-tier Tribunal does not contain a material error of law and stands.

Signed



Deputy Upper Tribunal Judge Sheridan Dated: 22 April 2018