



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/16289/2016

THE IMMIGRATION ACTS

Heard at Field House
On 26th April 2018

Decision & Reasons Promulgated
On 22nd May 2018

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

OLUFUNKE AJIBOLA OYEWU
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms A Holmes, Home Office Presenting Officer
For the Respondent: Mr C Mupara of Counsel, instructed by Chipatiso Associates LLP

DECISION AND REASONS

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Rodger promulgated on 10 January 2018, in which Ms Oyewo's appeal against the Secretary of State's decision to refuse her human rights claim dated 3 June 2016 was allowed. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with Ms Oyewo as the Appellant and the Secretary of State as the Respondent.
2. The Appellant is a national of Nigeria, born on 23 June 1956, who first arrived in the United Kingdom as a visitor on 29 June 2002, such leave expiring on 18 December 2002. A number of further applications for leave to remain were submitted, all of which were refused and challenges to such decisions by way of statutory appeal or an application for permission to proceed with Judicial Review, were all unsuccessful. The human

rights application was most recently made on 12 February 2015 and an update to that application was made on 6 April 2016 by the Appellant.

3. The Respondent refused the application on 13 June 2016 on the basis that the Appellant did not meet the requirements for leave to remain set out in Appendix FM of the Immigration Rules, nor did she meet the requirements in paragraph 276ADE of the same, in particular because there would be no very significant obstacles to her reintegration into Nigeria as she has spent the majority of her life there, there would be no language barriers, there are existing ties and family in the United Kingdom could help with financial support on return. The Appellant's claim for leave to remain on health grounds under Articles 3 and 8 of the European Convention on Human Rights was considered but reference was made to treatment being available in Nigeria and in all the circumstances the high threshold in medical cases had not been reached for a grant of leave to remain. There were no exceptional circumstances, although the Appellant's family life with her adult daughter and other family members was considered, emphasis was also placed on the very significant debt owed to the NHS for the Appellant's treatment and her adverse immigration history, remaining unlawfully in the United Kingdom since 2002.
4. Judge Rodger allowed the appeal in a decision promulgated on 10 January 2018 on the basis that the appellant's removal from the United Kingdom would constitute a disproportionate interference with her right to respect for private and family life in the United Kingdom in breach of Article 8 of the European Convention on Human Rights. In particular, it was found that the Appellant enjoyed family life with her daughter and a strong private life in the United Kingdom with wider family members, network of support and medical treatment. The factors which weighed heavily in the public interest, including the Appellant's lack of lawful leave to remain in the United Kingdom and her outstanding medical bill, were outweighed by the length of time that she had remained in the United Kingdom, her vulnerability, her complex medical conditions and the strength of her ties in the United Kingdom. Further, an application for entry clearance would not be realistic given that for medical reasons the Appellant was unable to fly.

The appeal

5. The Respondent appeals on the basis that the First-tier Tribunal materially misdirected itself in law, specifically by failing to apply GS (India) v Secretary of State for the Home Department [2015] 1 WLR and MM (Zimbabwe) v Secretary of State for the Home Department [2012] EWCA Civ 279; failed to have sufficient regard to the objective evidence as to the availability of medical treatment in Nigeria for the Appellant and questions the finding of dependency on the facts.
6. Permission to appeal was granted by Judge Birrell on 9 March 2018 on all grounds, with a comment that it was arguable that the First-tier Tribunal had failed to give adequate reasons why this case was truly exceptional for a breach of Article 8 of the European Convention on Human Rights.

7. At the hearing, the Home Office Presenting Officer accepted that there was little force or merit in the written grounds of appeal in circumstances where the appeal was allowed under Article 8 of the European Convention on Human Rights rather than under Article 3 of the same. In light of these submissions, I indicated my preliminary view was that there was no error of law in the decision of the First-tier Tribunal and the parties were agreed that it was appropriate to dismiss the appeal. I set out my reasons for doing so below.

Findings and reasons

8. The Respondent's grounds of appeal essentially amount to disagreement with the decision reached by the First-tier Tribunal rather than identifying any material misdirection in law or any other error. The decision of Judge Rodger sets out the authorities of GS and MM and contains a correct self-direction following those as to the ambit of appeals on health grounds under Articles 3 and 8 of the European Convention on Human Rights; expressly acknowledging that there is no obligation to treat the Appellant and that something more is required to engage Article 8 than the absence or inadequacy of medical treatment (see paragraphs 41 and 42 of the decision). The Judge goes on to consider that some medical treatment is available in Nigeria although it is likely to be inadequate for the Appellant's complex conditions, but that that of itself was not of sufficient strength to counterbalance the public interest in removal. However, it was a relevant fact that could be taken into account in the proportionality exercise for Article 8 (see paragraph 43).
9. There followed positive findings as to the extent of the Appellant's established family and private life in the United Kingdom which are sufficiently reasoned as to dependency on her daughter in particular, and even if, contrary to the findings of Judge Rodger, do not show family life, they are part of the Appellant's established private life in the United Kingdom. The First-tier Tribunal expressly applies and considers the factors in section 117B of the Nationality, Immigration and Asylum Act 2002 and attaches significant weight to the public interest in removal, taking into account the Appellant's adverse immigration history; level of debt to the NHS and likely future burden on the state. However, in what the Judge appropriately describes as a difficult case on the facts in light of this, he concludes that the strong public interest is outweighed by the length of time the Appellant has spent in the United Kingdom; her vulnerability; her complex medical conditions; the strength of her family and private life ties in the United Kingdom and her inability to effectively pursue her private life on return to Nigeria due to the likely deterioration in her health. That conclusion was open to the First-tier Tribunal to make on the evidence before it when undertaking the balancing exercise for the purposes of Article 8 and does not fail to take into account any material considerations, nor does it fail to acknowledge and take into account the significant public interest in removal on the facts of this case. For these reasons I find no error of law in the decision of the First-tier Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to allow the appeal is therefore confirmed.

No anonymity direction is made.

Signed

A handwritten signature in black ink, appearing to read 'E. Jackson', written in a cursive style.

Date

17th May 2018

Upper Tribunal Judge Jackson