



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/25078/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 12th October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

MS MOTUNRAYO RACHEL OLUFARATI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms L Turnbull, Counsel

For the Respondent: Mrs Z Kiss, HOPO

**DECISION AND REASONS**

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal G Andrews who, in a decision promulgated on 27 February 2018, dismissed her appeal against a decision made by the respondent on 29 October 2016 to refuse her leave to remain on Article 8 grounds.
2. The appellant is a citizen of Nigeria born on 27 November 1966.

3. The judge appellant's immigration history as gleaned from the Reasons for Refusal Letter is that the appellant first came to the UK in 2005. In May 2014 she applied for leave to remain in the UK. The application was refused with no right of appeal. In September 2014 she applied for an EEA residence card. The application was refused. Her appeal against that refusal was dismissed by a judge of the First-tier Tribunal in a decision promulgated on 2 June 2015. On 21 December 2015 she again applied for leave to remain on the basis of family life with her husband, private life, and exceptional circumstances that she claimed prevented her return to Nigeria.
4. At the hearing before the First-tier Tribunal Judge the appellant did not give oral evidence. The appeal took the form of submissions by the appellant's Counsel. There was no appearance by the respondent.
5. The judge made the following findings of fact. In 2006 in the UK the appellant met the man who was to become her husband. She started living with him later that year. He was a British citizen. They married in 2013. He suffered from health problems and the appellant provided substantial care for him. Her husband sadly died on 26 December 2015. He is buried in the UK.
6. A letter from the appellant's vicar said the appellant's husband's death brought her enormous grief, distress and sadness from which she has not fully recovered. The appellant now suffers from depressive illness and post-traumatic stress disorder and has been prescribed anti-depressant medication and has some sessions of psychological therapy. She suffers from chronic iron deficiency, anaemia.
7. The judge found that the appellant has extended family members in Nigeria from the application she made for leave to remain. Both her parents are deceased, and she does not have a family home in Nigeria. The appellant has no educational qualifications.
8. The judge found that the appellant has friends in the UK based on the letters of support that were submitted on her behalf. Based on the letter from her vicar the judge found that the appellant plays an active role in the church community, where she is well-liked. She is a church usher, participates in other church duties, and rarely misses Sunday services. Overall, the judge found that the appellant is socially and culturally integrated in the UK.
9. The judge found that the appellant has not supplied her with any evidence of ever having leave to be in the UK. In response to question 4.4 of her May 2014 application, she said she entered the UK in 2005 without entry clearance, using someone else's documents. Taking everything into account the judge found that the appellant has been in the UK unlawfully, ever since arriving here in 2005. She also accepted the appellant's representative's submission that the appellant has not returned to Nigeria since arriving here in 2005.

10. The judge considered the appellant's claim that she meets the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules. She found that it was not disputed that the appellant is aged 18 years or above and has lived continuously in the UK for less than 20 years. The question she has to consider therefore is whether there would be very significant obstacles to her integration into Nigeria. In consideration of this issue the judge relied on the "very significant obstacles" test in **Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 13**, paragraph 37.
11. The judge took into account the doctor's letter which said the appellant should not suddenly stop her anti-depressant medication, and also that she will be assessed by a psychiatrist if she does not get better. The judge found however that the appellant does not argue that she would be unable to obtain appropriate medical support in Nigeria, and none of the evidence before her persuaded her that this was the case.
12. The judge noted that the appellant has mental health problems. The appellant said that on some days she cannot bear to face the world. The judge found that despite this, the appellant manages to play an active role in her church community in the UK, and rarely misses Sunday services. Having considered all the evidence, in particular her doctor's letter, the judge was not satisfied that her health problems are so severe that she could not attend a church in Nigeria and, within a reasonable time, build up a variety of human relationships to give substance to her private life in Nigeria. In reaching this conclusion, the judge took account of the appellant's evidence that her late husband's family wrongly believe in Nigeria that she has property and money from her late husband, which may make it difficult for her to be accepted by those family members.
13. The judge found that the appellant is now 51 years old and has no educational qualifications. In her witness statement she said that friends who have recently arrived in the UK have said that things are very tough economically in Nigeria. The judge said she was not provided with any evidence to support this assertion. In her witness statement the appellant said she may need to compete with younger people in order to get work in Nigeria. The judge found that she is still of working age and even taking account of her health problems, she has not satisfied her that she would be unable to support herself in Nigeria.
14. The judge noted that the appellant has not returned to Nigeria since coming to the UK in 2005. She found however that the appellant has lived all her life in Nigeria before coming here in her late 30s. She speaks the Yoruba language. As such, she would be returning to a country she is culturally familiar with. Although she does not have a family home in Nigeria, she has extended family members there, and they might be in a position to help her re-integrate. Further, she is a Nigerian citizen and should as such be able to enjoy the full benefits of citizenship of that country.
15. The judge took into consideration that the appellant is still grieving for her late husband, whose death has clearly greatly affected her. If she were to return to

Nigeria she would be unable to visit his grave in the UK and she would of course have to leave the home she shared with him, where she currently lives. The judge took into consideration her representative's submission that the appellant's late husband is still a source of comfort for her although he has now died.

16. The judge considered all the evidence in the round. She found that the appellant may not have the same standard of living in Nigeria, compared with her likely standard of living if she remained here. Also, there would no doubt be a period of adjustment but, as stated in **Treebhawon**, she must apply an "elevated threshold" here, such that mere hardship, mere difficulty, mere hurdles and mere upheaval or inconvenience, even where multiplied, are generally insufficient. Having considered all the evidence in the round, the judge was not persuaded that there would be very significant obstacles to the appellant's integration into Nigeria. Accordingly she found that paragraph 276ADE(1)(vi) does not apply in this case.
17. The judge then considered the appellant's appeal under Article 8 of the ECHR with respect to private life only.
18. The judge held at [26] that private life is a broad term not susceptible to exhaustive definition. In view of the length of time the appellant had been in the UK, her relationship here with her late husband, her friendships and her involvement in the church, the judge found that the appellant has private life in the UK.
19. The judge then went on to apply the principles in **Razgar [2004] UKHL 27**.
20. The judge accepted that the appellant's removal from the UK would be an interference by a public authority with the exercise of her right to respect for private life. She was also satisfied that such interference would have consequences of such gravity as to engage Article 8. She answered the next two questions in **Razgar** positively. Consequently she held that the appeal turns on the issue of proportionality.
21. The judge considered the appellant's representative's submission that on the appellant's side of the balance she has not been a burden on public funds and does not have a criminal record. However the judge applied the head note of **Nasim and Others (Article 8) [2014] UKUT 25** which states that a person's human rights are not enhanced by not committing criminal offences or not relying on public funds. The only significance of such matters in cases concerning proposed or hypothetical removal from the United Kingdom is to preclude the Secretary of State from pointing to any public interest justifying removal, over and above the basic importance of maintaining a firm and coherent system of immigration control.
22. At [30] the judge identified the factors that were on the appellant's side of the balance. These were that she has been in the UK since 2005. She is socially and culturally integrated here, has friends here and plays an active role in her church community. However, the judge considered it likely that the appellant could

maintain contact with her church and friends from Nigeria, through modern means of communication.

23. The judge considered that the appellant's vicar described her as an asset to the church and the local community. Her health problems, lack of education and lack of property in Nigeria are likely to make it more difficult for her to resume life in Nigeria. She is the widow of a British citizen who died in late 2015.
24. The judge held at [31] that the factors on the appellant's side of the balance in no way outweigh those found to be on the respondent's side of the balance. She applied the Supreme Court's decision in **MM (Lebanon) & Others, R (app) v SSHD [2017] UKSC 10** where it was stated at paragraph 75 that although the tribunal must make its own judgment, it should attach considerable weight to judgments made by the Secretary of State in the exercise of her constitutional responsibility for immigration policy.
25. The Judge found that the appellant does not meet the requirements of the Immigration Rules and attached great weight to this. As stated in Section 117B(1) of the 2002 Act, the maintenance of effective immigration controls is in the public interest.
26. The judge found that the appellant has been in the UK unlawfully ever since she arrived here in 2005. In the circumstances Section 117B(4)(a) of the 2002 Act requires her to have regard to the consideration that little weight should be given to any of her private life in the UK, established since 2005.
27. The judge also took into account the findings that she made at paragraph 24.
28. Overall, the judge was not persuaded that the appellant has been able to show clear evidential reasons why her circumstances mean that the usual policy considerations do not apply to her. The judge found that there are no exceptional circumstances or compassionate or compelling factors in this appeal, although she appreciated that there was no test of exceptionality as such. The judge dismissed the appellant's appeal.
29. First-tier Tribunal Judge Holmes granted the appellant permission to appeal the judge's decision. He said the judge was undoubtedly correct, even after **AM (Zambia) [2018] EWCA Civ 64** to conclude that the appellant's health did not meet the Article 3 threshold. He said that where the judge arguably erred was that having found that the appellant did have a "private life" in the UK of sufficient strength and quality to engage Article 8, was in failing to bring the evidence of the appellant's health needs into the proportionality assessment.
30. Ms Turnbull agreed with the reason for the grant of permission. She said the judge did not properly consider the appellant's health issues when considering Article 8 outside the Rules.

31. Ms Turnbull submitted that the judge accepted the majority of the appellant's evidence, and that she was deeply grieved and depressed. She relied on the decision in **Bensaid** made by the European Court of Human Rights which held that private life "is a broad term not susceptible to exhaustive definition" (I note this was also relied on by the judge at paragraph 26). Ms Turnbull said that in **Bensaid** the European Court held that mental health must also be regarded as a crucial part of private life. She submitted that whilst the judge at [31] refers to **MM (Lebanon)** and considers Section 117B of the 2002 Act, she does not say what consideration she has given to the appellant's mental health when considering proportionality. The judge considers reintegration and finds that the appellant has not returned to Nigeria since 2005. The judge's finding that the appellant has extended family members in Nigeria is speculation and not backed up by evidence.
32. Ms Turnbull said that are exceptional factors in this case. The appellant is grieving for her husband. She nursed him through serious health issues. The respondent did not appreciate how ill the appellant's husband was. He died at home. The appellant has PTSD and a depressive illness. She would be forced to leave the area where she lived with her husband and would not be able to visit his grave. Involvement with the church community and friends assist her in dealing with her tragedy. Ms Turnbull said the judge skimmed through consideration of these factors. The judge was influenced by the overriding factor which is the appellant's illegal stay in the UK.
33. I accept Ms Kiss's submission that the judge has done enough even though her findings under Article 8 outside the Immigration Rules may have been brief. At [26] the judge quoted from [47] of **Bensaid** that private life is a broad term not susceptible to exhaustive definition. This was the same paragraph relied on by Ms Turnbull.
34. I find that the judge made her findings in respect of the appellant's mental health when she was considering paragraph 276ADE. The judge's findings at [24] were pertinent to the consideration of the appellant's appeal under Article 8. At [24.i] the judge considered the doctor's letter that the appellant should not suddenly stop her anti-depressant medication, and also that she will be assessed by a psychiatrist if she does not get better. The judge noted that the appellant did not argue that she would be unable to obtain appropriate medical support in Nigeria and none of the evidence before her persuaded her that this was the case. The judge's finding that the appellant has extended family members in Nigeria was taken from the appellant's application form of 2015. Therefore the judge's finding that they might be in a position to help her reintegrate was open to her.
35. At [24.ii] the judge noted that the appellant has mental health problems. She was not satisfied that her health problems are so severe that she could not attend a church in Nigeria and, within a reasonable time, build up a variety of human relationships to give substance to her private life in Nigeria. The judge at [24.v] took note of the submission that the appellant is still grieving for her late husband, and that if she

were to return to Nigeria she would be unable to visit his grave in the UK and that she would have to leave the home she shared with him. Having looked at the evidence in the round the judge found that the appellant did not meet the requirements of the Immigration Rules. The judge was entitled when considering Article 8 to attach weight to her findings at [24]. Consequently, I reject the submission that the judge was greatly influenced by the appellant's illegal stay. The appellant's illegal stay was one of the factors the judge took into account when considering Article 8 outside the Immigration Rules.

36. I find that the judge's decision dismissing the appellant's appeal shall stand.

**Notice of Decision**

The appeal is dismissed.

No anonymity direction is made.

Signed

Date: 5 October 2018

Deputy Upper Tribunal Judge Eshun