Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/15378/2018

THE IMMIGRATION ACTS

Heard at Field House	**Determination & Reasons Promulgated**
On 3 June 2019	On 10 June 2019

Before

UPPER TRIBUNAL JUDGE PLIMMER
UPPER TRIBUNAL JUDGE KEITH

Between

GBEMISOLA [R]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: None
For the respondent: Ms Everett, Senior Home Office Presenting Officer

DECISION

1. The appellant has appealed against a decision of the First-tier Tribunal ('FTT') promulgated on 18 March 2019 dismissing her appeal on human rights grounds.

Immigration history

2. The appellant is a citizen of Nigeria who entered the United Kingdom ('UK') as a visitor in 2002. She overstayed her visa but in 2004 she applied for a residence card as the spouse of an EEA citizen. This was granted until 6 March 2009. Her application for permanent residence was refused without a right of appeal on two occasions in 2010 and 2011. Her third application for permanent residence was refused in 2012 but with a right of appeal. The skeleton argument relied upon by the appellant before the FTT makes it clear that the respondent withdrew the 2012 decision and replaced it with a further refusal in 2014. The appellant appealed against this to an earlier FTT but her appeal was dismissed on 3 July 2015. The appellant then applied to remain in the UK on the basis of her human rights in an application dated 30 June 2017. This was refused by the respondent in a decision dated 4 July 2018. It is this decision that was appealed to the FTT.

Appellant's case before the FTT

3. The appellant's case before the FTT is summarised in a skeleton argument submitted on her behalf by Counsel. This submits that the appellant has a strong relationship with her siblings in the UK and this constitutes family life; when that is combined with her private life including her considerable mental health issues she would face very significant obstacles in reintegrating into Nigeria and her removal would breach Article 8 of the ECHR.

FTT decision

4. The FTT did not accept that the appellant had family life with her siblings for the purposes of Article 8. This has not been the subject of the grounds of appeal, and we therefore need say no more about this. The FTT then turned its attention to the appellant's mental health and private life together with the factors set out at section 117B of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'), before concluding that her removal would not breach Article 8 of the ECHR.

Grounds of appeal

5. The grounds of appeal are twofold:

   (i) The FTT made an error in proceeding on the basis that the appellant had no leave to remain after 6 March 2009 when she had an appeal pending before the FTT;

(ii) The FTT failed to properly take into account the risk of the appellant's mental health relapsing in Nigeria in the light of the country background evidence that mental health issues remain highly stigmatised in Nigeria.

6. In a decision dated 24 April 2019 PJM Hollingworth granted permission to appeal on both grounds.

Hearing

7. The appellant's solicitors emailed the Tribunal shortly before the hearing to explain they were no longer instructed. The appellant did not attend the hearing nor provide any reasons for her failure to do so.

8. Ms Everett clarified the appellant's immigration history and commended to us the history set out in the skeleton argument before the FTT. She invited us to find that any error regarding the appellant's immigration history was not material to the overall findings made.

9. We reserved our decision, which we now give with reasons.

Error of law discussion

(1) Immigration history

10. The FTT recorded the appellant's immigration history at [2] and referred to it at [15] of its decision. The FTT was entitled to observe that the appellant's residence card as a spouse did not continue beyond 6 March 2009 and she had "*no leave to remain in the UK since that date*". There was no basis upon which the appellant could benefit from a statutory extension of leave, and in any event this was not argued on her behalf. The FTT also observed that the appellant's private life has been formed "*substantially during the period which she has remained here unlawfully*". We acknowledge that the appellant was pursuing an appeal for part of the time after the expiry of her residence card in 2009, and it would have been preferable for the FTT to have expressly referred to this. However, there was no basis upon which the appellant could benefit from a statutory extension of leave. Although she made applications for permanent residence in 2010, 2011 and 2013, these were unsuccessful. The appellant had an appeal on EEA grounds pending from 9 August 2012 until the appeal was dismissed nearly three years later in July 2015. She then had a human rights appeal pending between July 2018 and February 2019. It follows that in the period following the expiry of the residence card from March 2009, the appellant only had a pending appeal for a period under four years. The FTT was therefore entitled to observe that her private life

was formed substantially when she remained in the UK unlawfully. This must be read alongside the FTT's summary of the appellant's immigration history at [2] wherein reference is made to the appellant's pending appeals, albeit the FTT made a mistake regarding the date of the FTT's decision dismissing her appeal on EEA grounds. The appellant's own skeleton argument referred to this as being in 2015 and not 2018.

11. In any event, assuming that we are wrong and the previous FTT appeal was not finally determined until 2018, this would have made no material difference to the outcome. The (unnamed) author of the grounds entirely fails to acknowledge that little weight can be given to the appellant's private life, whether she was in the UK unlawfully or pending appeal i.e. on a precarious basis – see sub-sections 117B(4) and (5) of the 2002 Act and Rhuppiah v SSHD [2018] UKSC 58 (14 November 2018). For the purposes of sub-section 117B(5), anyone who, not being a UK citizen, was present in the UK and who had leave to reside there other than to do so indefinitely had a precarious immigration status. We note from the reasoning in Rhuppiah that the phrase "have regard" in section 117A(2) indicates that the general rule that only little weight should be accorded to private life when immigration status was precarious may be overridden in a "truly exceptional case" with particularly strong features of private life. However, there was no submission before the FTT, and nor could there be, that this case is truly exceptional or had truly exceptional features.

(2) Mental health evidence

12. The grounds of appeal entirely omit reference to the FTT's summary of the evidence relevant to the appellant's mental health. At [5] the FTT noted that notwithstanding what happened in 2004 and 2017 there "*has been a marked improvement in the appellant's mental state*". The FTT was well aware of the appellant's case that "*mental health issues are regarded with suspicion and hostility*" in Nigeria (see [6] of the decision) and the country background evidence in support of this (see [9] and [14] of the decision). Contrary to the submission in the grounds of appeal, the FTT adequately addressed the evidence relied upon by the appellant and was entitled to find there would be no breach of Article 8. This is because, having acknowledged the appellant's mental health history and in particular the events in 2004 and 2017, the FTT made a finding that the appellant's mental health problems were now under control with medication (and there was no evidence this could not be obtained in Nigeria). The FTT also found that the appellant would be able to gain employment in Nigeria and / or be supported by her siblings from the UK. When the decision is read as a whole the FTT was clearly aware of the appellant's past mental health history, the country background evidence on mental health facilities. These

matters were factored in, alongside the relevant section 117B of the 2002 Act factors, and the FTT was entitled to conclude that the appellant's removal would not lead to a breach of Article 8 of the ECHR.

13. Although the FTT failed to directly address 276ADE of the Immigration Rules and in particular whether there would be very significant obstacles to the appellant's re-integration in Nigeria, this is not a material error of law. The FTT's findings of fact are such that submissions based upon 276ADE would be bound to fail or cannot on any legitimate view have succeeded.

Decision

14. The FTT decision did not involve the making of a material error of law and is not set aside.

Signed: *UTJ Plimmer*

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
4 June 2019