



**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: HU/24175/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 May 2019**

**Decision & Reasons Promulgated  
On 11 June 2019**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN  
UPPER TRIBUNAL JUDGE FINCH**

**Between**

**MUFUTAU [S]**

**(anonymity direction not made)**

**Appellant**

**-and-**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation**

For the Appellant:

Mr. E. Pipi, instructed by Devine Solicitors

For the Respondent:

Mr. S. Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Appellant is a national of Nigeria. He entered the United Kingdom, as a family visitor, on 3 February 2011 and remained here after his visa expired on 22 May 2011. He married a

British citizen on 14 November 2013 and applied for leave to remain, as her husband, on 20 October 2014. This application was refused on 10 December 2014. He made a further human rights claim on 29 March 2016. This application was also refused on 6 October 2016.

2. He appealed against this decision, but First-tier Tribunal Judge Obhi dismissed his appeal in a decision promulgated on 9 January 2019. The Appellant appealed and on 29 April 2019 First-tier Tribunal Judge Zucker granted him permission to appeal.

### **ERROR OF LAW HEARING**

3. At the start of the hearing, counsel for the Appellant, handed up decision by the Conduct and Competence Committee of the Health and Care Professions Tribunal Service. It confirmed that on 5 November 2017, Dr. Ewa Oboho, a Registered and Chartered Forensic Psychologist, had had been struck off from the Register of Health and Care Professionals. Therefore, he withdrew grounds 1(i) to (iii) of the grounds of appeal, on the basis that they referred to reports prepared by Dr. Oboho after he had been struck off. We agreed to him withdrawing these grounds. Counsel for the Appellant and the Home Office Presenting Officer then made oral submissions and we have referred to the content of these submissions, where relevant, in our decision below.

### **ERROR OF LAW DECISION**

4. First-tier Tribunal Judge Zucker granted the Appellant permission to appeal on the basis that First-tier Tribunal Judge Obhi had failed to have regard to a medical report by Dr. Oboho, dated 15 December 2018, which was sent to the Tribunal after the hearing but before the decision was promulgated. First-tier Tribunal Judge Zucker stated that there was rather less merit in the other grounds but nevertheless granted permission to appeal in relation to them. Two of these grounds related to the fact that First-tier Tribunal Judge Obhi had not referred to another report by Dr. Oboho, dated 22 January 2018, in his decision.
5. Counsel for the Appellant no longer relies on the content of the reports dated 22 January 2018 and 15 December 2018, which were written after Dr. Oboho had been struck off the Register of Health and Care Professionals.

6. Counsel continued to rely on the fact that in paragraph 28 of her decision, First-tier Tribunal Judge Obhi found that there was no evidence of assessment using any known psychological tools or psychometric testing. She did accept that Dr. Oboho had referred to a number of psychological tests but noted that he had not set out the test or what was done. Counsel submitted that First-tier Tribunal Judge Obhi had failed to take into account the fact that in paragraph 4.2 of the report by Dr. Oboho, dated 4 July 2016, he had noted his observations of the Appellant's wife. He then went on to state that he used Million Clinical Multiaxial Inventor-III to screen for the presence of recognised mental and personality disorders and life-long personality traits.
7. He added that the Appellant's wife's profile was based on all 24 clinical scales interpreted to illustrate the interplay between longstanding characterological patterns and the distinctive clinical symptoms currently being manifested. However, the report did not include any scores obtained during this screening process or explain the significance of any such scores and how these were used to arrive at any assessment. Therefore, the criticism by the Judge of the methodology employed by Dr. Oboho was a cogent one in the light of the evidence before her.
8. It is also clear that First-tier Tribunal Judge Obhi questioned Dr. Oboho's level of expertise and whether he had the necessary qualifications to comment on the Appellant's wife's medical conditions. The Appellant has not addressed this issue or the fact that First-tier Tribunal Judge Obhi queried the evidential value of the 2016 report, which contained no diagnosis of the Appellant's wife medical condition. Taken at its highest, Dr. Oboho stated in paragraph 8 of the 2016 report:

“On the basis of the test data obtained, it might be assumed that she is experiencing a severe mental disorder and further professional observation and inpatient care might be appropriate”.

9. Ground 2 of the grounds of appeal also submitted that First-tier Tribunal Judge Obhi erred in paragraph 30 of her decision when she concluded that due to the lack of medical evidence the Appellant's wife was not sick in the way described. The medical evidence from the Appellant's clinicians was limited to an Upper GI Urgent Suspected Cancer Referral form

attached to a letter from St. Thomas' Hospital, dated 21 March 2016, which stated that she had chronic bleeding.

10. It was clear that the Appellant had been provided with a number of opportunities to provide further evidence but had failed to do so. For example, a previous hearing set down for 1 February 2018 was adjourned in order for the Appellant to obtain medical evidence about his wife's medical condition. In particular, it had been said that the medical report would be from the NHS consultant treating his wife. The hearing was set down for 7 June 2018 but was again adjourned on the basis that his wife had collapsed and been taken the hospital. However, no medical evidence was subsequently provided to show that this was the case. In addition, a bare assertion was made on 17 December 2018 that the Appellant's wife was too ill to attend the proceedings.
11. As a consequence, and in the absence of any further medical evidence, the finding by First-tier Tribunal Judge Obhi was one which was open to her.
12. Ground 3 of the grounds of appeal submitted that First-tier Tribunal Judge Obhi erred in paragraphs 33 and 34 of her decision as her findings were predicated on her conclusion that there was nothing wrong with the Appellant's wife. For the reasons given above, this was a finding which was open to her on the very limited evidence before her. It was also submitted that First-tier Tribunal Judge Obhi erred in paragraph 34 of her decision when she found that "even if she is ill [her husband] would be able to afford treatment for her through his business". Counsel for the Appellant submitted that, as the Appellant's wife had not yet been diagnosed, the Judge should not have presumed that the Appellant's savings would be sufficient to pay for any treatment in Nigeria. However, this was a bare assertion in the absence of any diagnosis or indication of any treatment which may be needed and the cost of any such treatment. In any event, case law indicates that a married couple cannot necessarily choose the country in which they wish to continue their family life even if the quality of medical services differed to those to be found in the United Kingdom.
13. In Ground 4 of the grounds of appeal it was submitted that First-tier Tribunal Judge Obhi had erred in law in not giving any weight to the fact that the Appellant speaks English and is financially independent. However, although any inability to speak English or to show financial independence are factors which would weigh against the Appellant for the purposes

of section 117B of the Nationality, Immigration and Asylum Act 2002, the fact that he can speak English and is financially independent are not determinative of any right to leave to remain.

14. In the current case the Appellant had at best had precarious leave to remain for under four months in 2011 and had been unlawfully present since then. Therefore, he would have needed some very strong factors over and above the fact that he was married to a British woman to outweigh the public interest in the maintenance of effective immigration control in compliance with section 117C(1) of the Nationality, Immigration and Asylum Act 2002 and the fact that section 117B(4) states that little weight should be given to a relationship formed with a qualifying partner that is established by a person at a time when the person is in the United Kingdom unlawfully.
15. For all of these reasons, we find that First-tier Tribunal Judge Obhi did not make errors of law in her decision.

### **Decision**

- (1) The Appellant's appeal is dismissed.

**Nadine Finch**

Signed

Date: 4 June 2019

Upper Tribunal Judge Finch