



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04843/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On the 20 July 2022**

**Decision & Reasons Promulgated
On the 22 August 2022**

Before

UPPER TRIBUNAL JUDGE PITT

Between

MR CALEB GARBA DANKARO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Georget, Counsel, instructed by House of Immigration Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This decision is the remaking of the appellant's appeal brought on Article 8 ECHR grounds.
2. The appellant is a citizen of Nigeria, born on 8 October 1987. He is now 34 years old.

Background

3. The appellant was brought to the UK by his mother on a visitor visa in 2005. The family overstayed thereafter.

4. The appellant made applications for leave to remain in 2010, 2016 and 2018, all of which were refused.
5. On 12 February 2020 the appellant made a further application for leave to remain on Article 8 ECHR grounds. He relied on his relationship with Braulia Julia Guedes Da Costa, an Angolan national. Ms Da Costa has leave as a refugee until July 2023. The appellant and Ms Da Costa have a daughter, born on 1 April 2020.
6. On 16 March 2020 the respondent refused the appellant's application for leave to remain on Article 8 ECHR grounds.
7. The appellant appealed to the First-tier Tribunal. In a decision issued on 23 April 2021, the First-tier Tribunal refused the appellant's Article 8 ECHR appeal.
8. The appellant appealed against the decision of the First-tier Tribunal. That matter came before me on 1 December 2021 and in a decision issued on 15 December 2021 I found an error of law in the decision of the First-tier Tribunal. The papers were not such that the appeal could be remade at the same hearing and the matter came before me again on 20 July 2022.
9. The parties were in agreement as to the correct legal matrix that had to be applied to the appellant's circumstances. It was accepted that the appellant now fell to benefit from the application of paragraph EX.1.1. and was entitled to an assessment of whether there would be insurmountable obstacles to exercising family life with his partner in Nigeria. The parties were also in agreement that in the event that the appellant could not show insurmountable obstacles to family life continuing outside of the UK, the proportionality of the decision to refuse leave had to be assessed under Article 8 ECHR outside of the Immigration Rules which would require consideration, amongst other matters, an assessment of the best interests of the appellant's child.
10. As set out in my error of law decision dated 15 December 2021 some of the findings of the First-tier Tribunal were preserved. It is accepted that the appellant has a genuine and subsisting family life with Ms Da Costa and their child and that they have been living together as a family unit for some years. Ms Da Costa's traumatic history which led to the grant of refugee status is also common ground. The appellant accepts that he cannot show very significant obstacles to reintegrating in Nigeria as provided in paragraph 276ADE(vi) of the Immigration Rules. The parties were in agreement that the core issue to be decided was whether there were insurmountable obstacles to the appellant and Ms Da Costa continuing their family life in Nigeria.

Discussion

11. Paragraph EX.1. and EX.2. of Appendix FM of the Immigration Rules, as relevant, provide:

"EX.1. This paragraph applies if

...

- (b) The applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.

EX.2. For the purposes of paragraph EX.1.(b) 'insurmountable obstacles' means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner."

- 12. As above, there is no dispute as to Ms Da Costa's history. She was granted refugee status on the basis that she had suffered from serious abuse whilst in Angola and again after coming to the UK. She has been found to be a victim of trafficking. Ms Da Costa is pregnant and expecting the couple's second child in October 2022. The couple's daughter is now 2 years old and she has been found to be the primary carer.
- 13. Ms Da Costa has also been found to suffer from mental disorders, the diagnoses of anxiety and depression being confirmed in the recent medical evidence before me. The most recent psychiatric report is dated 7 April 2022 and is from Dr Tripathi, a Consultant Forensic Psychiatrist. The conclusions of the report were not disputed by the respondent. Dr Tripathi set out:

"18. OPINION AND RECOMMENDATIONS

- 18.1 Ms Da Costa has a history of traumatic past. This occurred in the form of emotional and physical abuse from her father, and witnessing domestic violence from her father towards her mother and sisters, and this continued for several years. Her traumatic experience continued after coming to the UK, wherein, she experienced emotional abuse and neglect first at the hands of her uncle and his wife, and later from another family who accused her of witchcraft.
- 18.2 As a result Ms Da Costas has experienced mental breakdown in the form of mood and anxiety symptoms, and thoughts of self-harm. Her GP records confirm a diagnosis of major depressive disorder, and according to Ms Josephine Dale's report, Ms Da Costa met the criteria for PTSD and anxiety.
- 18.3 She has been treated with antidepressant medication. Records also confirm her receiving psychological therapy.
- 18.4 During the assessment, Ms Da Costa presented with low mood, anxiety, tearfulness, irregular sleep, and appetite. She also reported low levels of energy and motivation, as she said she was having to put in efforts into things she does. She also reported night terrors, wherein she experiences being chased by others. She is able to carry out day-to-day chores with the help of her husband Mr Dankaro. She is able to derive some enjoyment by spending time with her family.

- 18.5 In my opinion, whilst Ms Da Costa has in the past attracted a diagnosis of PTSD, she does not currently meet the diagnostic criteria for the same. In my opinion, Ms Da Costa's current symptoms are in keeping with a diagnosis of mixed anxiety and depression (International Classification of Disease - Version 10 Code - F41.2), with the severity of her symptoms being mild to moderate. The World Health Organisation's ICD10 describes *mixed anxiety and depressive disorder* '... When symptoms of anxiety and depression are both present, but neither is clearly predominant, and neither type of symptom is present to the extent that justifies a diagnosis if considered separately ...'
- 18.8 Her symptoms have worsened in the context of her husband's unresolved immigration matter, and the fear of inability to cope and look after their children, if Mr Dankaro was deported from the country.
- 18.9 Lack of willingness to focus on things around her: During the assessment, Ms Da Cost reported spending time in her part-time role and looking after her child, however she also reported relying on Mr Dankaro's support in looking after their child. She reported seeking frequent reassurances from him by calling him on his mobile. In light of her mental health difficulties, she is likely to find it increasingly difficult to carry out parental responsibilities on her own, if Mr Dankaro was deported.
- 18.10 I am of the view that her mental health condition is likely to get worse if Mr Dankaro was deported as he appears to remain her main support. This is due to the increasing burden of supporting her children whilst being emotionally and mentally vulnerable. It is well-known that being single and a history of stressful and negative life experiences increases the risk of anxiety and depression.
- 18.11 Given her presentation during the assessment which indicated ongoing mood and anxiety symptoms, I have advised Ms Da Costa to seek mental health help via her GP."
14. The assessment in the most recent medical report is consistent, other than regarding the diagnosis of PTSD, with the previous findings of fact and medical evidence concerning Ms Da Costa.
15. The medical evidence was also consistent with Ms Da Costa's presentation at the hearing on 20 July 2022. She was physically and mentally agitated from the outset of giving her evidence, became tearful almost immediately and became sufficiently unwell for the hearing to have to be stopped for a period to enable her to continue giving her evidence. Her presentation was entirely in line with the medical evidence of the past four years detailing her mental health difficulties.
16. Dr Tripathi identifies that Ms Da Costa's symptoms have already worsened because of the appellant's uncertain immigration status. It appeared to me that the psychiatric opinion on her emotional and mental vulnerability suggested strongly that her mental health would deteriorate if she were to have to relocate to Nigeria, disrupting the period of relative stability she has experienced since being recognised as a refugee in the UK. Her fear

and despair at even contemplating that eventuality was palpable at the hearing. Ms Da Costa's evidence and that of the appellant as to her already only just coping in the UK with the high level of support the appellant currently provides was not challenged by the respondent.

17. The difficulties that the appellant and Ms Da Costa would face in Nigeria were also heightened, in my judgement, by the fact of the appellant not having been in Nigeria for the past 17 years. He spent almost all of his childhood in the country so it cannot be argued that he does not have some knowledge of life there. However, this will obviously be limited given that he has never lived there as an independent adult, now has to support a family and has been absent for a significant period of time. Ms Da Costa, even setting aside the concerns considered above, is currently 7 months pregnant and unlikely to be able to assist in establishing and supporting the family in the short term. It was not disputed that the appellant does not have any relatives in Nigeria or other network that might be able to assist on return. When those circumstances are considered together with Ms Da Costa's profile as found above, my judgment was that she would be most unlikely to be able to cope if she were to go to Nigeria and that her mental state would deteriorate.
18. It is therefore my conclusion that Ms Da Costa's profile combined with the lack of support for the family in Nigeria and the difficulties the couple would face in trying to establish themselves there now do amount to very significant difficulties and meet the insurmountable obstacles test set out in paragraph EX.1.1..
19. It was therefore my conclusion, that in all the circumstances, there would be insurmountable obstacles to the couple exercising their family life in Nigeria and that paragraph EX.1. was met. I allow the appeal on that basis.
20. It may be worth giving an indication that given Ms Da Costa's likely deterioration if she were to go to Nigeria with the appellant and indication from Dr Tripathi that she would also deteriorate if the appellant were to return alone, it appeared to me that the impact on the family, in particular on the couple's daughter, provided a basis for finding a disproportionate interference with their family life.

Notice of Decision

21. The decision of the First-tier Tribunal disclosed an error on a point of law.
22. The appeal is remade as allowed under Article 8 ECHR.

Signed S Pitt
Upper Tribunal Judge Pitt

Date 3 August 2022