



Upper Tribunal  
Immigration and Asylum Chamber

Appeal Number: OA/21488/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 22 October 2014

Promulgated on:  
24 October 2014

**Before**

**Upper Tribunal Judge Kekić**

**Between**

**Theresa Akunna Nwabiakam  
(anonymity order not made)**

**Appellant**

**and**

**Entry Clearance Officer**

**Respondent**

**Determination and Reasons**

**Representation**

For the Appellant:

Ms Antonia Nwabiakam, the sponsor

For the Respondent:

Ms A Holmes, Senior Home Office Presenting Officer

**Background**

1. This appeal comes before me following the grant of permission to the Entry Clearance Officer (Nigerian post not specified) on 12 September 2014 by First-tier Tribunal Judge Cheales in respect of the determination of First-tier Tribunal Judge Callender Smith who allowed the appeal by way of a determination dated 19 August 2014. For convenience I continue to refer

to the Entry Clearance Officer as the respondent and to Mrs Nwabiakam as the appellant.

2. The appellant is a citizen of Nigeria born on 14 April 1948. She sought entry clearance to join her daughter, the sponsor, under the provisions of paragraph EC-DR 1.1(d) of Appendix FM. Her application was refused on 8 November 2013 because the ECO was not satisfied that the appellant and sponsor were related as claimed, or that the care the appellant required could not be provided in Nigeria with financial support from her sponsor.
3. The appeal came before Judge Callender Smith who heard oral evidence from the sponsor, considered the substantial bundle of documentary evidence provided and concluded that the requirements of the rules had been met.
4. The respondent sought and obtained permission to appeal on the grounds that it was arguable that the judge had taken account of evidence that post dated the decision. There is no challenge to the judge's positive finding on the relationship.
5. The appellant's representative was unable to attend the hearing due to illness but the sponsor indicated that she was content to proceed. Having explained the issue to her, I then invited Ms Holmes to make submissions. She did so and relied on the grounds with some expansion and reference to sections of the determination. The sponsor then responded. She summarised her mother's condition since her accident in 2009 to the present time. Ms Holmes made a brief response. At the conclusion of the hearing I indicated that I would be upholding the judge's decision to allow the appeal and I now give my reasons for so doing.

### **Findings and Conclusions**

6. The judge was satisfied on the basis of DNA evidence that the appellant and sponsor were related as claimed. There is no challenge to that finding.
7. With regard to the respondent's criticism of the judge's decision, it is important to place his findings in context. The appellant's health problems began in 2009 after a serious road traffic accident when she was badly injured. Prior to that she had been reasonably well and indeed had made visits to the UK to see the sponsor and her family. The appellant suffered head injuries, a fractured rib, fractured clavicle and fractured femur and was hospitalised for over a month. She developed mental health issues and suffered depression and memory loss. She has been wheelchair bound since the operation, cannot sit up on her own and requires help with getting out of bed, toileting, washing, dressing, cooking, shopping and keeping hospital appointments. Due to her immobility since the accident she has become morbidly obese. She

has required further surgery for bone grafting and to insert plates but due to the lack of satisfactory post operative care, she has had falls and the plates have been displaced requiring yet more surgery. The sponsor has been to visit her in 2010, 2011, 2012, 2013 and 2014. Confirmation of her travel is provided by the copies of her passport which show several visits each year. Details of the appellant's health issues and the steps the sponsor has taken since 2009 to attempt to address them are set out fully in the substantial documentary evidence that was submitted to the First-tier Tribunal. There is ample medical evidence to support the sponsor's account and documentary evidence of the costs that she has incurred since 2009. These facts are relevant as they clearly show that the appellant's problems are ongoing and whilst they may have become even more serious as the judge noted and was criticised for doing so, he was not so much making a decision on post decision evidence as looking at it as an ongoing issue which had begun in 2009. To single out phrases he has used here and there is unhelpful and disregards the context in which they were made and the inevitability of a deteriorating condition the longer she is deprived of the care she so badly requires and as she ages. Whilst the judge does indeed refer to the situation after the date of decision, he does so only after having accepted the situation as it was between the accident in 2009 and the date of the decision. The observations on how matters have developed since then complete the picture in the sense of these problems being an ongoing concern. That is confirmed by his finding that the appellant "continues to be very seriously ill" (paragraph 41). Rather than demonstrating an error of the kind the respondent suggests in her grounds, this confirms that the appellant's situation now is as it was previously. It is therefore a fact that appertains to the situation as at the date of the decision.

8. It would be wholly misconceived to argue that the judge based his decision on post decision evidence. Much of that evidence appertains to facts in existence prior to the date of the decision in November 2013. Additionally it is plain from his determination that the judge made several findings on the pre November 2013 facts. He notes the absence of care homes and care agencies in Nigeria (paragraph 15), the care arrangements the sponsor had made (paragraphs 16-17), the inadequacy of the arrangements (18) and the difficulties in finding a carer (19-20). The criticism of the judge's reference in paragraph 21 to an abscess which developed in March 2014 is unjustified as it is a summary of the sponsor's oral evidence and not a finding on which the decision was based.
9. The judge found the sponsor's oral testimony and the documentary evidence provided to be cogent, credible and compelling (paragraph 31) and I am bound to say that I, too, was very impressed with the case as put by the sponsor on behalf of her mother. She is clearly a devoted daughter and has done everything possible to obtain for the mother the care that she so badly requires since her very unfortunate road accident in 2009. The judge plainly

made his decision after great care and a thorough examination of the evidence (paragraphs 33-34). He was satisfied that there was no professional caring option in Nigeria for the appellant (paragraphs 36-38 and 43). He found that since the accident, the sponsor had spent over £100,000 on trying to solve the problem for her mother and had run herself ragged physically and financially (paragraph 39) and that her children had also suffered (paragraph 44). Contrary to what the respondent argues in the grounds, the sponsor cannot afford to pay for the care which in any event is wholly inadequate. His finding that "the idea that she (the sponsor) would not find a way of having her mother's needs met in Nigeria - if there was such a way for that to be achieved - flies in the face of what I have listened to in the sponsor's evidence and read in the appellant's appeal file" (paragraph 45) is one that was wholly supported by the evidence.

10. Whilst it is right to say that the sponsor has been providing the funds for her mother, the respondent does not take account of the fact that those funds have partially come from loans, from credit cards and from friends and church goers. The argument that the sponsor, a single mother, albeit employed as a senior nurse, with three dependent children, was able to meet the costs of the appellant's health care is just not supported by the evidence. She has certainly done well to raise the money, to go without so that the funds can be channelled to the appellant, but that certainly cannot be described as affordable health care. When the costs involved in her regular visits and the loss of income whilst she is away (as she is self employed) are factored into the equation, it may be seen that the care is *not* affordable.
11. The rules require the appellant to show, inter alia, that:
  - as a result of age, illness or disability, she requires long term personal care to perform everyday tasks,
  - she must be unable, even with the practical and financial help of the sponsor, be unable to obtain the required level of care in the country where she is living *because*
    - it is not available *and*
    - there is no person who can reasonably provide it *or*
    - it is not affordable.
12. It is not disputed that the appellant requires long term personal care. With regard to the second requirement, the First-tier Tribunal Judge was satisfied having considered all the evidence, that there was no infrastructure in Nigeria for the kind of professional carers required for the elderly in Nigeria, let alone the aged ill like the appellant (paragraph 40). He sets out extracts from the documents to support his finding. Ms Holmes did not seek to argue that adequate care would be available or that there was someone else who would be able to provide it. The judge was therefore entitled to find, on the basis of evidence appertaining to the facts as at the date of the decision, that the

required level of care was not available and that there was no person who could provide it (at paragraph 46). Once those requirements are met, the issue of affordability does not even arise and so the respondent's arguments in Ground 2 are irrelevant in this appeal.

13. For all these reasons, I conclude that the judge did not make any errors of law, that his determination is carefully prepared and thorough and that all his findings are fully supported by the evidence. There is no misdirection of the nature alleged by the respondent. I uphold the determination. Given the seriousness of the appellant's condition, I would hope that this decision is speedily implemented.

### **Decision**

14. The First-tier Tribunal Judge did not make errors of law and his decision to allow the appeal stands.

### **Anonymity**

15. The First-tier Tribunal Judge made no order for anonymity and no request for one was made to me.

**Signed:**

**Dr R Kekić  
Judge of the Upper Tribunal**

23 October 2014