IAC-TH-CP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/34610/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 December 2015	**On 21 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

J O
~~(ANONYMITY ORDER NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms. J. Rothwell, Counsel.
For the Respondent: Ms A. Everett, Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a citizen of Nigeria, born on 30 September 1979.

2. She made application for leave to remain on human rights grounds. That application was refused by the respondent on 12 August 2014 as she was not satisfied that the appellant had been in the United Kingdom for twenty years or had a child or partner in the country, nor was there evidence to prove she had been in the United Kingdom before 2007 or that there would be significant obstacles to her reintegration into

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Nigeria where she would appear to have spent most of her life. No high level of dependency with family members in the United Kingdom had been proven and she had no expectation of being allowed to stay. Suitable medical treatment was available in Nigeria, her condition is not life-threatening and the medical documents indicated she does not have a suicidal ideation.

3. The appellant appealed that decision and following a hearing at Richmond and in a decision promulgated on 11 May 2015 Judge of the First-tier Tribunal A J M Baldwin dismissed the appellant's appeal both under the Immigration Rules and on human rights grounds.

4. The appellant's immigration history is one of having claimed to enter the United Kingdom on 6 February 1996 and applying for indefinite leave to remain on 7 June 2011 based on long residency, a claim refused with no right of appeal. A request for reconsideration of that decision was refused in April 2012. She was subsequently interviewed on 9 December 2013 and served with an IS.151A "illegal entry verbal deception".

5. The appellant's claim is based upon her dependency on her mother and family members in the United Kingdom due to her paranoid schizophrenia and type 2 diabetes. In Nigeria she would face degrading and inhumane treatment, having no-one there to whom she could turn for the level of support she requires.

6. The First-tier Tribunal considered the appellant's bundle including witness statements, interview records, supportive letters and medical evidence. That evidence is recorded at paragraphs 9 to 14 of the judge's decision.

7. The judge's findings are recorded at paragraphs 22 onward. He found amongst other things, that the appellant continues to suffer from paranoid schizophrenia and type 2 diabetes and that her psychiatrist's view is that the support she receives from her mother is vital to maintaining stability and deportation presents a real risk of her suffering a relapse, resulting in risk to herself and others. Further that the psychiatric evidence shows that she has been in the United Kingdom since at least 2007. The psychiatrist does though not address the issue of whether it is possible that a patient in their late 20s might suddenly become a paranoid schizophrenic with no previous medical history or evidence of substance abuse. The judge went on to consider medical evidence and records showing that the appellant had been in employment through a London care agency between 1996 and 2004 and her enjoying this work but which both "the appellant and her mother insist she did not undertake". The judge considered this issue and made a finding that in the absence of any documentary or corroborative evidence in relation to her employment the most probable explanation for the inconsistent evidence would appear to be that the appellant and/or her mother mentioned the appellant's working in the United Kingdom for many years in the hope that it might eventually advance a case for her to be allowed to remain.

8. The judge found at paragraph 25 of his decision that the appellant's mother's "word cannot safely be relied upon". During the hearing he recorded that her evidence shifted when questions were put to her about her passport and her last visit to Nigeria. She clearly told the judge that she did not have a passport with her and that she had last been back to her country of origin ten years ago. This evidence is materially inconsistent with the evidence she gave some moments later to the judge when she provided her passport and it became clear that she went back three and a half years ago to attend a wedding. The judge went on to find this evidence suggestive of other family members still being in Nigeria. He then went on to make findings in relation to the evidence of both the appellant and her mother as to whether or not the appellant's father died in 2005 or five to six years ago and noted that there was no corroborative documentary evidence of this death at all.

9. The judge found that the appellant may have registered with a GP in 1996 when entering the United Kingdom as a visitor. There was no documentary evidence of her working (payslips etc.) in the United Kingdom between 1996 and 2004. He concluded that it was more probable than not that the appellant returned to Nigeria after such a visit in 1996 and came back around 2007 when she began suffering from mental ill-health. The judge took account of letters within the appellant's bundle in relation to the appellant's presence in the United Kingdom but noted that none of those letter-writers had been called to give evidence and found therefore that he was "unable to attach much weight to what they said about this". The judge also took account of the evidence of a church minister which was of a more restrictive nature in terms of how long he had known the appellant and/or her family.

10. The judge summarised his findings at paragraph 27 of his decision which states:-

> "In summary, the Appellant is 35 years old, not in a relationship and has no children. She has proved she has been in the UK continuously since 2007 and I accept she may have visited the UK back in 1996. She suffers from two serious medical conditions which require her to take medications orally and by injection. She has not proved that her father is dead, and if he died in 2005 (or 5-6 years ago) it would seem very odd that no reference would appear to him being deceased in the Affidavit the Appellant made on 14.9.10. Having first applied for ILR based on Long Residence almost 4 years ago she has, with her mother's help, had more than enough time to locate evidence about her father and provide evidence relating to the years between 1996 and 2007. Her failure to adduce evidence to which I could attach any significant weight is notable and, I find, significant. She has never had leave to be in the UK and her status has therefore been precarious throughout."

11. The judge concluded his findings at paragraph 28 of his decision which states:-

> "The Appellant's conditions are serious and I accept that a failure to treat them would present risk to herself and to others whether she is in the UK or in Nigeria. No evidence has been provided by or on behalf of the Appellant to show that her medications would not be available in Nigeria or that they would be unaffordable for the mother who has accepted financial responsibility for her. The mother works as a Nurse and would, according to the latest Pay Slips she has provided – (September 2013) – appear to be capable of earning nearly £40k. p.a., her gross pay to Month 6 of 2013–2014 being c.£19.3k. As the mother visited Nigeria just 3.5 years ago for a

Wedding, it would seem likely she still has family there, and there is no documentary evidence that the Appellant's father is dead. It is clear from the Church Minister's letter that, despite the Appellant's medical conditions, she is able to make a useful contribution to her Church and there is no evidence to suggest she will not be able to do so in Nigeria, where her Church will no doubt do what it can to support her and encourage her. There being no reliable evidence to show that her father is dead, I find that it is reasonable to suppose that he is still alive and would be prepared to assist his daughter to some degree. The Appellant's condition is not such that it cannot be treated, though I accept that she may need encouragement and possibly reminding to follow it. She would be returning to a country in which it is more likely than not she spent the first 26-27 years of her life, much the greater part of her life. She has never been entitled to expect that she would be allowed to remain in the UK. The objective evidence in the Refusal Letter concerning Healthcare and the availability of medications in Nigeria has not been challenged by the production of any objective evidence by the Appellant. There is no evidence to suggest that there is a real risk the Appellant would attempt suicide were she to be removed and I accept that medications for her treatment are available in Nigeria. On the evidence presented, removal would be neither inhumane nor degrading. I do not doubt that medical treatment in Nigeria may be less good and more expensive then it would be were the Appellant to be allowed to remain in the UK, but that is not sufficient reason to allow the Appellant to remain. The Appellant is recorded as having 'good insight', recognising the 'early warning signs', complying with her medications and engaging with medical services. These are all important but might count for little if she genuinely had no-one to whom she could turn in Nigeria for support and encouragement. An absence of family in Nigeria she has not, however, proved and I find for the reasons set out above that it is more probable than not that her father and other family members remain in Nigeria. I accept that the Appellant's mother and step-father will worry about her if she has to return but the Appellant is an adult and one can be confident that the mother will continue to support her financially and made arrangements in Nigeria for such support and care as the Appellant may need. As a Nurse, and one who lived for many years in Nigeria and has quite recently visited the country, the mother should be well-equipped to arrange this, travelling to Nigeria to do so should that be necessary. Her income suggests this should not cause her undue difficulty. The Appellant's removal would, I find, be neither disproportionate nor unreasonable to any of them and her circumstances are not exceptional."

12. Permission to appeal to the Upper Tribunal was sought but initially refused. A renewed application was granted by Deputy Upper Tribunal Judge Archer on 10 September 2015. His reasons for granting permission were as follows:-

"The grounds of appeal seek to challenge the findings and conclusions of First-tier Tribunal Judge Baldwin. However, permission to appeal can only be granted if there is a properly argued point of law capable of affecting the outcome of the appeal.

The grounds assert that the judge erred in law by basing the findings about length of stay in the UK on speculation and not evidence, failed to give an opportunity for expert evidence as to when paranoid schizophrenia can develop (then finding that the appellant entered the UK in 2007 after her illness developed), speculated that the appellant's father is alive and can look after her (the evidence was that the father is dead) and made similar speculative findings about the ability of the mother to look after the appellant in Nigeria. Long residence should have been considered under the pre-2012 Immigration Rules.

> I find that the grounds are arguable. The judge found that the appellant has serious symptoms and has suffered from paranoid schizophrenia since 2007. Fact finding required the utmost care."

13. Ms Rothwell argued that the judge first erred in relying upon speculation for coming to the conclusion that the appellant had not been in the United Kingdom since 1996 and that great care ought to have been taken prior to coming to the conclusion that he did. She referred me to various elements of the medical evidence where it is recorded that the appellant had been referred to as working. She crystallised this aspect of her appeal by concluding that the conflict between that evidence and the judge's findings was enough to cast sufficient doubt on the evidence thereby rendering it unsafe. Secondly that this was not an issue referred to in the respondent's refusal letter and that if the judge was concerned about it, given that it went to adverse credibility findings, he ought to have adjourned the hearing part heard for psychiatric evidence to be obtained from the psychiatrist to comment on the issues. Thirdly the judge further speculated that the appellant's father would look after her in Nigeria and particularly so in his finding that:-

    > "There is no reliable evidence to show that her father is dead, I find that it is reasonable to suppose that he is still alive and would be prepared to assist his daughter to some degree."

    I was referred to evidence that the appellant's father organised her travel to the United Kingdom without reference to her mother. Ms Rothwell accepted there was no corroborative evidence of her father's death but argued that it was "a quantum leap" to find that he would be able to look after the appellant in her country of origin. There was no evidence that he would be able to do this and such a speculative finding amounted to a material error of law. It was accepted that the appellant's witness statement did not deal with this issue nor an affidavit she swore in 2010 which appears at paragraph 96 of her bundle which sets out her circumstances but fails to record the death of her father. Fourthly the judge again erred in his consideration of the appellant's mother's financial position relying on payslips within her bundle that are dated between 2010 and 2011. She suggested it was incumbent upon the judge to enquire about the position as at 2015 at the time of hearing. Finally it was argued the judge failed to assess the evidence of the appellant's supporters who had provided letters within her bundle regarding both her and her family and the length of time she had been in the United Kingdom. It was argued the judge failed to state how much weight he had applied to such evidence.

14. Finally Ms Rothwell accepted that if she was unable to succeed on the abovementioned arguments the balance of her grounds seeking permission to appeal fell away. They relate to an argument that her claim ought to have been considered under paragraph 276 of the Immigration Rules HC 395 (as amended) and not under Appendix FM.

15. Opposing the appeal Ms Everett urged me to accept that the First-tier Tribunal Judge had directed himself appropriately and that the grounds seeking permission to

appeal were no more than a disagreement with the judge's findings that were open to be made on the evidence that was before him.

16. For the following reasons I share that analysis.

17. In so doing I recognise, as did Ms Rothwell, that consideration of her "**Robinson**" obvious argument becomes a redundant exercise.

18. The judge has considered the totality of the evidence that was before him. It was always for the appellant to prove her case to the required standard and in so doing the burden of providing evidence rested upon her. Throughout she has been legally represented. The judge has come to conclusions that were fully open to be made on the evidence. There was ample justification for his adverse credibility findings and he has provided legally adequate reasoning for coming to the conclusions that he did in relation to the appellant's claim. I accept that the appellant's grounds seeking permission to appeal amount to no more than a disagreement with findings and reasoning which are legally adequate and taken proper account of the totality of the evidence both documentary and oral that fell to be considered by Judge Baldwin.

19. The judge considered the totality of the psychiatric evidence and there was nothing speculative about his findings in relation to the conclusion that the appellant had not been in the United Kingdom since 1996. Contrary to the asserted grounds the judge has taken great care and this is a detailed and carefully written decision analysing all aspects of the appellant's appeal. The judge has made findings that were open to him in coming to the conclusions as to how the evidence panned out and a realisation that there was a "complete lack of documentary corroboration" in relation to the appellant's claimed working in the United Kingdom. The judge was entitled to find at paragraph 25 of his decision that the appellant's mother's evidence could not be relied on. Contrary to the asserted grounds there is no speculation in relation to whether a patient in her late twenties might suddenly become a paranoid schizophrenic. The judge makes a finding that the expert evidence did not address this issue and no more. Even if this were an exercise in speculation, as is asserted, it would not have been material to the outcome of this particular appellant's appeal. Again in relation to the appellant's father's "death" it cannot be said that the judge has relied upon speculation. He has considered the evidence that was put before him including not only oral evidence but also the witness statements of the appellant, her mother and stepfather alongside other materials including an affidavit sworn by the appellant in 2010. The appellant had ample opportunity to put forward a case that relied upon her father's death but failed to do so. Likewise the judge's conclusions were informed by the evidence of the appellant's mother which became apparent as the hearing went along after consideration of her passport showed that she had returned some three and a half years ago to Nigeria to attend a wedding. Of course the judge took account of the appellant's mother's payslips. They were provided to him within the appellant's bundle and it is difficult to conclude that they should have been set aside and other evidence considered which fell to be provided by the appellant through her representatives. The judge attaches little weight to the evidence of the appellant's friends who put forward letters which are within the

appellant's bundle but who did not attend the hearing to give oral evidence. He says at paragraph 26 of his decision:-

> "I therefore find myself unable to attach much weight to what they say about this."

He also notes that the church minister did not indicate from what year he had known the appellant limiting himself to stating that he had known her parents and their family for over ten years. It is difficult to appreciate how else the judge was to express his analysis of this evidence. In the absence of oral evidence little weight could be attached to it. That was the approach of the judge and in taking it he has not, as Ms Rothwell, suggests materially erred.

20. As I say I find the grounds put forward by the appellant essentially amount to no more than an argument with the conclusions of Judge Baldwin.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

~~No anonymity direction is made.~~

Signed   Date 10 December 2015.

Deputy Upper Tribunal Judge Appleyard