



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

Appeal Number: IA 04017 2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 September 2013**

**Determination Promulgated  
On 3 October 2013**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**YEMESI AMOKE IBRAHIM**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss J Bond, Counsel, instructed by Freemans Solicitors  
For the Respondent: Miss S Walker, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Nigeria. She was born on 6 July 1953 and so is now 60 years old. She appealed unsuccessfully to the First-tier Tribunal a decision of the respondent on 17 January 2013 refusing to vary her leave to enter or remain in the United Kingdom. By reason of this decision her permission to be in the United Kingdom came to an end and she appealed to the First-tier Tribunal.
2. The application was refused with reference to paragraph 317(i)(e) and (iii) of HC 395. That is to say the respondent was not satisfied that if the appellant were living outside the United Kingdom she would be living in the “most exceptional compassionate circumstances” and “financially wholly or mainly dependant on the relative present and settled in the United Kingdom”. The respondent did not believe that the appellant was wholly or mainly dependent on her son who was settled in the United Kingdom because, according to the respondent, there was insufficient evidence to support the claim and she did not believe that the

appellant would be living alone in the most exceptional compassionate circumstances because at the time of her application for permission to enter the United Kingdom she claimed to be living in rented accommodation on her own and drawing an income from a restaurant business.

3. Regrettably the First-tier Tribunal Judge plainly misdirected herself. She seemed uncertain about the test that had to be satisfied given that the appellant was making her application from within the United Kingdom. If there was any doubt on this point it was settled authoritatively in the case of **MB (Para 317: in-country applications) Bangladesh [2006] UKAIT 00091**. The ratio of the case is summed up in the head note prepared by the Tribunal which states:

“The appellant needs to show that he would meet the substantive requirements of paragraph 317 if he were still in his own country. It is not sufficient to show that he is able to meet the requirements of the Rules whilst he is in the United Kingdom.”

4. Mr Walker could not defend the decision and I moved on to redetermine the appeal.
5. Miss Bond asked for the case to be adjourned. Her reasons were that the case was not well prepared and she wanted to do better. That was undoubtedly right but was no reason to adjourn the appeal. The appeal should have been ready when it was heard in May 2013 and there was no good reason at all to allow further time.
6. It is for the appellant to show on the balance of probabilities that her circumstances satisfy the circumstances of the Rules. It is also open to her to show that her removal consequent on the decision would be a disproportionate interference with her private and family life. To the extent that ideas on the burden and standard of proof are meaningful in the context of an Article 8 balancing exercise it is for the appellant to show that removal would interfere with her rights and for the respondent to show that the removal is justified. Matters are to be resolved to the “real risk” standard.
7. I begin by seeing how the appellant presented her application. When she made her application she gave her address in the United Kingdom as “Flat 8” in a street in south east London. She said that her home in Nigeria was owned by her landlord. She lived alone and the property was not in a good state of repair. She had an income “from my restaurant business” (question 4.9) and received financial support from her son in the United Kingdom.
8. She explained that her circumstances have changed. After arriving in the United Kingdom as a visitor she was admitted to hospital because of complications arising from diabetes and her right leg was amputated. She had been recovering at her son’s home and said “I will find it extremely difficult to adapt and cope in Nigeria as I will be on my own. The medical facilities in Nigeria are also non-existent as a result of which I will not be able to lead a dignified life.”
9. She then said how her son paid a precise sum just a little short of £600 a month for his accommodation in the United Kingdom and she would be able to have her own room there.

10. There was also produced documentation about her mortgagee on flat 8 and also a “Confidential Occupational Therapy Home Visit Report” arising from an inspection on 17 May 2012 of an address in Mitcham where the appellant then lived.
11. It was said on that occasion that she lived with her “niece and her two sons (aged 2 and 4 years)”. The bathroom, and particularly the lavatory, was unsuitable for a person with her disability.
12. There are statements from Barclays Bank and payslips.
13. Before me the appellant gave evidence and adopted her statement. Her statement is dated 23 May 2013 and was clearly signed at the hearing before the First-tier Tribunal. She explained there that she intended to visit her son in the United Kingdom for a short visit as she had frequently done in the past but was admitted to hospital and eventually her leg was amputated.
14. She found it a matter for “shock and surprise” that she was refused leave to remain as her son was “in a position to maintain and accommodate me without recourse to public funds”.
15. She said that the attention given to her in the United Kingdom was just not available to people in her circumstances in Nigeria. Vulnerable people, as she would be, are “an easy target for hoodlums who prey on the weak and disabled”.
16. She also claims she was emotionally close to her son who supported her.
17. She said in her statement that she was a “self-employed trader” and managed with financial assistance from her son.
18. The business had collapsed in her absence and the accommodation had been repossessed by the landlord as she was not prepared to pay rent for an occupied property.
19. She did not feel able to contemplate coping with life in Nigeria.
20. She had no assets or property or savings in Nigeria.
21. In answer to additional questions she said that the “niece” identified in the occupational therapist’s report was in fact her son’s partner. They had since married although they did not live together. Her son supported her in the United Kingdom. In Nigeria she said she had a little business selling mainly soft drinks, minerals and bottled water. She managed it on her own. When she left Nigeria she had a pickup motor vehicle which she drove to a warehouse to get stock. Occasionally stock was delivered but such deliveries were both unreliable and expensive and she could not run the business profitably without being able to drive. She could not drive now that her leg had been amputated. She asserted that automatic transmission vehicles were not available in Nigeria although qualified that a little to suggest they were available but would cost too much to maintain.
22. She said that she spent about £600 a month when she lived in Nigeria, that £100 came reliably from her son and about £500 from her business. If she had to employ a person to do the work that she would do if she were able bodied she would expect to pay about £250 a month for such assistance.

23. She had no contact with other relatives in Nigeria. She had brothers but had not seen them for over twenty years.
24. She was cross-examined.
25. She said that during her frequent visits to the United Kingdom the business was managed by an employee, that the employee was subject to her close direction and did not have the business sense to manage in her absence.
26. The pickup truck had been retained by mechanics who sold it to cover the cost of repairs. Her property had been repossessed by the landlord. It should be said the appellant did not suggest there was anything at all unfair about the conduct of the mechanics or the landlord. She clearly regarded this as an appropriate way of settling her financial obligations but the fact is she now no longer had anywhere to live and no longer had a motor vehicle to use for her business.
27. She said that her diabetes could be treated in Nigeria and medication was often available to her without charge from the hospitals and was always available if she was willing to pay.
28. She said she had neighbours in Nigeria with whom she was on friendly terms and she had friends at church but no one close. The employee who looked after the shop did not count as a friend.
29. Mr Adedayo Oladele Omowon identified himself as the appellant's son and gave evidence before me. He too adopted a statement made on 23 May 2013.
30. He said that he was the only child of his mother and he had looked after her since she arrived in the United Kingdom. There was no one in Nigeria who could look after her. His home was in the United Kingdom where he had family obligations. He described it as "extremely harsh and unpalatable" to think of his mother living in Nigeria. She would be in a vulnerable position and an easy target.
31. His father abandoned his mother when he was about 8 years old. His father had other wives. His mother was not a widow.
32. In answer to additional questions he said that he earned about £20,000 per year after tax.
33. He said that he was married and had three children. His wife did some charity work as a church secretary although she had stopped that during her pregnancy. A third child had been born fairly recently.
34. She said that he did not currently live with his wife and children because "according to our tribal custom we are not a couple until we have done some things." I think that this was an enigmatic reference to paying some kind of dowry but this is not important.
35. He said that his mother stayed with his wife for about a month after she came out of hospital and then removed to live with him.
36. He explained how she managed in the house. She said that she could not cook because she was not able to cope with big pans. He typically provided small amounts of food which she heated as necessary in a microwave oven that he had placed in the sitting room to be convenient for her. He said that she did bits of

cooking. For example, she cooked noodles and made tea and coffee and was able to look after herself in the bathroom but could not run the home. He said he was responsible for her and there was no one else did help.

37. He was cross-examined. He confirmed that his mother's business had closed and the accommodation was no longer available to her.
38. He did not think that his mother would ever drive again. He accepted that it might be possible for her to pay a driver. His real concern was that she would be vulnerable as a disabled person.
39. I confirm that I considered all the papers before me, including those that I have not found necessary to describe expressly in the determination.
40. There is an article from the "National Mirror" under the heading "Nigerian Physically Challenged Cry Out: We are being humiliated!" The article says that there is little or no consideration for the needs of disabled people in Nigeria. Disabled people found it difficult to get employment and public transport was inaccessible. An article in a similar vein came from "Vanguard" under the heading "Lamentations of the physically challenged". This referred to people being shunned because of disability. Another article called for a need for mass public education.
41. I find the appellant has been broadly truthful. There were irritating inconsistencies in the evidence. Her son talked about her visiting for up to four weeks and she referred to visiting for up to four months. Clearly one of them was not telling the truth and it is difficult to see how this discrepancy could have been the result of an honest mistake. The different timescales are considerable. It would have been interesting to know why the appellant said in her application that she had an income from a restaurant business but told me about a business selling mainly soft drinks.
42. However, the entirely straightforward way in which she spoke about the business she ran in Nigeria was impressive. She did not claim to be particularly poor or particularly successful. She did not suggest that a pickup truck was necessary for the business, simply it made it a great deal easier to run the business profitably. Neither did she suggest that it was impossible to find the labour to assist. Rather the cost would make big inroads into profitability. There are so many ways in which she could have exaggerated this aspect of her evidence but did not that I find it probably that she was broadly telling me the truth. I am satisfied that before she came to the United Kingdom she did run a small shop which was profitable and the main but not the only source of her income.
43. I am also satisfied that that business is no longer available to her.
44. I was also impressed with the way the appellant had addressed her disability. I hope with appropriate respect for her privacy, I asked her to explain the nature of the amputation and she said that it involved the leg being cut off just below the knee. She was clearly using some kind of prosthesis and was managing to get about on walking sticks. I do not want it to be thought I am suggesting that she managed without difficulty. That would be most unfair but she did not give me any reason to think she was exaggerating her difficulties. She is a woman who

can slowly walk reasonable distances to get about if people are prepared to be patient and help her. She could not manage without help and understanding.

45. The evidence of financial support was not entirely clear. I am satisfied that the appellant's son is in regular work earning the sort of sums he indicated and that he paid money to his mother frequently and in the kind of sums they indicated. This is very believable and again it is not determinative of the case.
46. Much was made about the appellant's age but she is only 60 years old.
47. If she were returned to Nigeria I accept there would be no family support but she is a woman capable of developing acquaintances and has told me that she has people she knows through church. There is every reason to think that these relationships would be resumed in the event of her return.
48. I accept that disabled people generally in Nigeria are treated in a way that would be unacceptable to the majority of the population in the United Kingdom. I have directed myself, although there is no evidence before me exactly on the point, that it would be more difficult for her to keep her prosthesis in good order in Nigeria than in the United Kingdom. I know from my own reading that artificial limbs do not have a particularly long life before they have to be replaced.
49. I find that in the even of the appellant remaining in the United Kingdom the appellant probably would be maintained without recourse to public funds as is required by the rules. The appellant's son clearly has a home and the additional costs of feeding and clothing the appellant are not great. He lives modestly within his means and I am satisfied has a high sense of responsibility towards his mother.
50. The big difficulty I have with is whether or not the appellant would be living alone the "most exceptional compassionate circumstances".
51. It is absolutely plain to me that the appellant and her son want her to remain in the United Kingdom. It is also plain to me that she could live there without being dependent on public funds setting aside the costs of her treatment to the health service. There is nothing before me to show that the appellant has had anything to which she is not entitled or that I should in some way construe against her the fact that she has taken advantage of the health facilities offered to her.
52. I cannot see how a woman who has clearly quite a cute business sense and who had been able to produce most of her income from trade whilst she was in Nigeria in the past could be said to be living alone in the most exceptional compassionate circumstances. Whilst I do not doubt for a moment she would prefer to remain in the United Kingdom with her family who would prefer her to live there, even when I allow for the difficulties faced by disabled people in Nigeria she would be capable of finding some kind of modest employment. I do not accept that she would be living in the kind of social isolation or penury that would enable me to find honestly that she is living alone in the most exceptional compassionate circumstances.
53. Miss Bond is very experienced and anticipated that this may well be the difficulty I faced. She put her case thoroughly and clearly and I have taken it all into

account and given it proper weight, but I cannot be persuaded on the evidence before me that the requirements of the Rules are satisfied.

54. Removal would plainly interfere with her private and family life. Indeed one might think the whole purpose of the Immigration Rules is to interfere with a person's private and family life. I have reminded myself of the test in **Regina v. Secretary of State for the Home Department ex parte Razgar [2004] UKHL 27** but the real question here is whether removal is proportionate. Policy makers do not limit the requirements of people wishing to live in the United Kingdom to being able to maintain and accommodate themselves without recourse to public funds. There are restrictions that are imposed to control immigration and one of them is that people who are below the age of 60, married and not living in the most exceptional compassionate circumstances are not allowed to settle. This restriction is consistent with the legitimate aims of protecting the economic well being of the United Kingdom and the rights and freedoms of others. Nothing before me has persuaded me that applying the rules is a disproportionate interference with the private and family life of this appellant or her family in the United Kingdom.
55. This is a decision that gives me no pleasure whatsoever but it is the one required by the Rules and although I set aside the decision of the First-tier Tribunal I replace it with a decision dismissing the appeal.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal



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Dated 3 October 2013