Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/00107/2015**

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons**
On 26 January 2016 **Promulgated**
On 4 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

O O O
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms Brocklesby-Weller, HOPO
For the Respondent: Mr Reynolds, counsel

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is a material error of law in the determination of First-tier Tribunal Judge Malins ("the FTTJ") promulgated on 6 August 2015, in which she allowed the appellant's appeal against the refusal of her application for leave to remain on human rights grounds on 12 December 2014. She allowed the appeal under the Immigration Rules and on human rights grounds.

2. For ease of reference and continuity, throughout this decision I maintain the descriptions of the parties as appellant and respondent, as set out in the FTTJ's decision, notwithstanding it is the Secretary of State who pursues this appeal.

3. No anonymity direction was made in the First-Tier Tribunal, but given my reference to the appellant's personal circumstances, such an order is appropriate now.

4. The respondent considered the human rights application under the Immigration Rules. She decided that the appellant had not demonstrated that she fulfilled the criteria in paragraph 276ADE(1)(vi), namely that there were very significant obstacles to her integration into the country to which she would have to go if required to leave the UK. However, the FTTJ considered whether the appellant had demonstrated she had no ties to Nigeria, ie she applied the previous version of 276ADE(1)(vi).

5. It was agreed by the parties' representatives before me that the FTTJ had erroneously applied the incorrect version of paragraph 276ADE(1)(iv). Paragraph 12(j) of the decision refers. I agree with this analysis and find that the decision of the FTTJ contains a material error of law.

6. There being no challenge to the FTTJ's findings of fact as regards the circumstances of the appellant, I invited submissions on whether the facts could be preserved and the decision remade by me. Both agreed that should be the case.

7. Ms Brocklesby-Weller submitted for the respondent that the FTTJ had found the relationship between the appellant and her mother in the UK fell short of that required for family ties. There was no dependency between them. With regard to private life, the Article 8 assessment should be through the lens of the Immigration Rules. Her primary submission was that there were no exceptional circumstances. However, in the alternative, she would rely on s117B. Limited weight should be given to the appellant's private life when her immigration status had been precarious. The appellant spoke English and would be financially secure. However, this did not bestow a grant of leave. The public interest was in her removal. She did not meet the requirements of the Immigration Rules. She would be returning to Nigeria as a healthy adult female who had spent 19 years in her country of nationality and only four years in the UK. Although she had immediate family members in the UK, the oral evidence before the FTTJ was that contact with people in the UK could be maintained by modern methods of communication. The appellant's mother could visit Nigeria with the appellant's siblings. The appellant was receiving monetary assistance and that could continue. The appellant was well educated and had extensive skills. She was not married. No reasons had been given as to why she could not reintegrate into Nigerian society. It had been the choice of the appellant's family to relocate to the UK without the appellant. The appellant had not made out her case that she would be an unprotected individual in Nigeria; there was no evidence to suggest that she would be subject to an enhanced degree of "threat" on return. It was normal for there to be a degree of apprehension in such circumstances.

8. For the appellant, Mr Reynolds accepted that the appellant did not fulfil the criteria in paragraph 276ADE. He submitted that her circumstances were such that they should be considered in the light of the Article 8 jurisprudence outside the Immigration Rules. He noted that the appellant had been at boarding school and under the guardianship of an adult friend when last in Nigeria in 2011. She would not have the benefit of such

support and guidance on return. She was a single Muslim woman and would be vulnerable as such (albeit her situation fell short of requiring protection). Her close ties to her family, now living in the UK, rendered her circumstances exceptional and compelling such that they should be considered outside the Immigration Rules. It was acknowledged that limited weight should be given to her private life established here whilst her immigration status was precarious but it was submitted she was a useful member of society; she had used her time in the UK well to gain a pharmaceutical degree. It would not be in the public interest for her to be removed. It was thanks to her close relationship with her family, newly regained, that she had achieved so much. She had no support network in Nigeria.

Discussion and Findings

9. I rely on the findings of the FTTJ as regards the appellant's circumstances and, with that factual matrix in mind, make the following findings.

10. The appellant does not fulfil the criteria in the Immigration Rules as regards her family or private life. That was conceded by Mr Reynolds on her behalf and his concession was appropriate given the appellant's circumstances.

11. It was submitted that the matter should be consider outside the Immigration Rules. I bear in mind the principles in **R (Oludoyi & Ors) v SSHD (Article 8 – MM (Lebanon) and Nagre) IJR [2014] UKUT 00539 (IAC)** where it was held that nothing in **Nagre, R (on the application of) v SSHD [2013] EWHC 720 (Admin)**, **Gulshan (Article 8 – new Rules – correct approach) Pakistan [2013] UKUT 640 (IAC)** or **Shahzad (Article 8: legitimate aim) [2014] UKUT 85 (IAC)** indicated that a threshold test was being suggested as opposed to making it clear that there was a need to look at the evidence to see if there was anything which had not already been adequately considered in the context of the Immigration Rules and which could lead to a successful Article 8 claim. These authorities must not be read as seeking to qualify or fetter the assessment of Article 8. This was consistent with paragraph 128 of **R (MM & Others) v SSHD [2014] EWCA Civ 985** that there was no utility in imposing a further intermediate test as a preliminary to a consideration of an Article 8 claim beyond the relevant criterion-based Rule. As is held in **R (Ganesabalan) v SSHD [2014] EWHC 2712 (Admin)**, there was no prior threshold which dictates whether the exercise of discretion should be considered; rather the nature of the assessment and the reasoning which were called for were informed by threshold considerations.

12. I consider that the evidence has been considered adequately under the Immigration Rules insofar as the appellant is concerned. Nonetheless, given the submission that the appellant would be returned to Nigeria as a lone single Muslim female without family support, I go on to consider her appeal outside the Immigration Rules. I do so preserving the findings of fact made in the First-tier Tribunal.

13. The appellant is an unmarried Muslim woman of 24. According to the FTTJ (paragraph 12(c)), "Of her original birth family, her father died in Nigeria, her mother and full brother and sister, are all settled in the UK as citizens". Thus I find she has no immediate family in Nigeria; her immediate family is living in the UK. However, the FTTJ did not find there was dependency between the appellant and her mother "rather, a very close (and novel) mother adult daughter relationship". The appellant is described as "unusually close to her aunt and cousins". I am unable, in the absence of evidence to demonstrate it or submissions in support, to find that this adult appellant has a family life with either her mother or her aunt and cousins in the UK. She has not demonstrated that Article 8 is engaged in her case.

14. Insofar as her private life is concerned, I find that Article 8 is engaged, because there will be grave consequences for the appellant as a result of the decision to remove her: she will be separated from her family and friends in the UK and unable to pursue her pharmaceutical career here.

15. It is conceded that the appellant is unable to demonstrate there are very significant obstacles to her reintegration into Nigerian life (paragraph 276ADE(1)(vi)). She does not fulfil any of the criteria in the Immigration Rules for the grant of leave to remain.

16. I take into account the public interest factors in s117B. The maintenance of effective immigration controls is in the public interest (s117B(1); the appellant speaks fluent English and has undertaken studies in that language; she would be less of a burden on taxpayers and is better able to integrate into society here. The appellant is not currently financially independent but is a graduate and is capable of becoming so. That said, little weight should be given to a private life established at a time when the person's immigration status is precarious (s117B(5)). In the present case, the appellant was granted leave to remain in the UK as a student. Thus her leave to remain was granted for a specific purpose (to study) and for periods mirroring with her studies here. Her leave to remain for that purpose expired in October 2014, a few months short of four years after her arrival. The appellant's private life, including her relationship with various members of her family in the UK, has been established during this period. The appellant could have had no expectation of being permitted to remain in this country once her studies had been completed.

17. The appellant has spent the majority of her life in Nigeria where she received most of her education. She left Nigeria at the age of 19, as an adult. Whilst it is said that she spent her latter years in Nigeria at boarding school, she would have spent school holidays elsewhere. Furthermore, I note that she returned to Nigeria in 2012, from the UK, for a visit which suggests that, at that time, she had not lost ties to that country. That said, I note that the FTTJ found that the appellant had "lost all ties" in Nigeria. I do not depart from that finding but I do consider the appellant would be able, on return, to rekindle her social ties, contacts and cultural links to that country where she lived until the age of 19. Whilst she has no immediate family there, I am satisfied that she would be able to rekindle former social contacts and to call on friends in Nigeria to give her

practical support at least during the initial period of her return until she re-establishes herself there. It is submitted on her behalf that she would be returning as a single Muslim lady and that she would be vulnerable as a result. I adopt the finding of the FTTJ to the effect that the appellant would have "cause to feel nervous and anxious for her safety to a sufficient extent to interfere in her freedom of action, including her peace of mind". However, she would have a degree of financial and practical support from her mother and relatives in the UK and could rekindle relationships with friends in Nigeria on return and this would assist her in resettling into her country of nationality. She would be able to continue her religious practice and attend a mosque, if she wished. Thus, although she would be nervous and anxious on return and this might impact on her well-being, at least in the short term, she would benefit from being able to practise her faith freely and from rekindling her relationships with former friends and contacts.

18. I also find that the appellant, who is highly educated and motivated, would be able to find work in Nigeria on return, using the skills and education she has obtained in the UK. She is a resourceful young lady who has achieved much in this country. Her education and skills will enable her to resettle on return. Whilst she lacks the support from specific individuals which she had previously, she would be returning as a mature and educated adult with the potential to take employment and live independently.

19. According to the FTTJ (paragraph 8), the appellant's oral evidence is that her mother would be able to provide her with some financial support on return and contact could be maintained by "modern methods of communication such as facebook and Skype". This would also assist her in setting herself up, at least in the short term, on return pending her relocating her friends there and finding permanent accommodation and employment.

20. Taking the evidence in the round I am unable to find that the degree of interference with the appellant's right to a private life (including her life with her family in the UK) is such as to outweigh the respondent's legitimate objective of maintaining effective immigration control.

21. I set aside the decision of the FTTJ and remake it dismissing the appeal under the Immigration Rules and on human rights grounds.

Decision

22. The making of the decision of the First-tier Tribunal did involve an error on a point of law.

23. I set aside the decision.

24. I re-make the decision in the appeal by dismissing it.

Signed ***A M Black*** Date 1 February 2016

Deputy Upper Tribunal Judge A M Black

Direction Regarding Anonymity – Rule 14, Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed ***A M Black*** Date 1 February 2016

Deputy Upper Tribunal Judge A M Black