



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/20136/2018

THE IMMIGRATION ACTS

Heard at Cardiff
On 20 June 2019

Decision & Reasons Promulgated
On 23 July 2019

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

ABIGAIL [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mrs S Rushforth, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision sent on 28 December 2018 Judge Monaghan of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, a citizen of Nigeria, against the decision made by the respondent on 13 September 2018 to refuse leave to remain in the UK.
2. The appellant's principal ground of appeal was that the judge failed to mention anything about the letter sent on 27 September 2018 from her doctor saying she was medically unfit to travel.

3. At the hearing there was no appearance by or on behalf of the appellant but she had sent a letter stating she would not attend because of her health but that she wished her appeal to go ahead. Having considered the file particulars, I was satisfied it was in the interests of justice to proceed with the hearing in the absence of one of the parties. I then heard brief submissions from Mrs Rushforth opposing the appellant's grounds of appeal.
4. As regards the appellant's principal ground of appeal, I would accept that the judge erred in not taking into account the statement in the letter of 27 September 2018 from her doctor, Dr Button. At paragraph 4(ix) the judge had stated that "[i]t has not been suggested that the appellant is unfit to travel." Clearly the letter of 27 September amounted to at least a suggestion that medical unfitness to travel was a problem in September. However, I do not consider that this error was a material one. First of all, the judge was clearly aware of the particulars of the appellant's medical history. At paragraph 13 she stated:

"13. I have before me in the Respondent's bundle a detailed letter from Dr Jennefe Button (30/08/2018). This sets out full details of the Appellant's previous diagnoses of uncontrolled hypertension (20/11/2017), Insulin dependent Diabetes (06/12/2017), an infected necrosis of the left buttock (24/05/2018) and renal impairment/kidney injury stage 3 (15/06/2018), secondary renal anaemia requiring weekly injections, now discontinued and proteinuria investigations which may result in a referral back to secondary care. The costs in relation to Diabetes and renal problems is said to be unknown. However, Dr Button has set out the charges made in respect of the two acute admissions in the sum of £1,252 and £10,921. The total known charges are therefore £12,173. It is clear from the letter that further costs have been incurred but Dr Button is unable to attribute a cost to these."
5. Secondly, the letter of 27 September 2018, although it did state that the appellant was medically unfit to travel at that time, only said that she was "currently medically unfit to travel" and manifestly did not state that this was a permanent feature of her condition. That is significant because it was dated over two months before the hearing. Thirdly, for an appellant to be able to succeed in a claim that she could not travel outside the UK, there would need to be not only up-to-date medical evidence but medical evidence that specified why that was the case. On the evidence before the judge she had travelled from Nigeria to the UK as recently as February 2017 and was not said to be unfit to travel in August 2018. None of her medical conditions as such precluded the ability to travel abroad. Fourthly, the appellant had requested that the appeal before the FtT Judge be heard on the papers, thereby electing to deny herself the opportunity to demonstrate at the hearing that she was unfit to travel.
6. As regards the appellant's other grounds of appeal, none of them does any more than voice mere disagreement with the judge's principal finding of fact.
7. The appellant states that she objects to the judge's assessment that she relies on others for support (see paragraph 36), but the judge found, and the appellant does

not dispute, that she is maintained financially by her husband. In my view that is all the judge meant by 'others' in paragraph 36.

8. The appellant states that her husband paid for her son before she made her visa application on 20 October 2017 in the sum of £388. However, the judge does not as such dispute that, stating at paragraph 15:

“15. The Appellant for her part, in one of two letters written by her and contained within the Respondent’s bundle refers to having to be admitted to hospital in connection with her pregnancy and as part of the process having a hospital scan which her husband paid cash for. I am not told the amount nor provided with any evidence of this such as a receipt. It may well explain however the discrepancy between the sum quoted in the GP letter and the sum quoted in the refusal letter, which is for a lesser amount.”

9. In any event, whatever the position about the amount of the sum and who paid for it, it is clear that the appellant owed at least £500 to the NHS, if not considerably more: see paragraph 16. The judge’s concluded at paragraphs 17 and 18:

“17. The Appellant has not submitted any evidence to show that these outstanding charges have been met. Other than the one reference to paying for one scan in cash, the Appellant has not dealt with this ground for refusal.

18. I therefore find that the Respondent has established to the standard required that the Appellant is in breach of the stated paragraph in the suitability requirements.”

Such a conclusion was entirely within the range of reasonable requirements. Manifestly, whatever the precise discrepancy in the amount owed it was at least £500 and accordingly the appellant failed to meet paragraph S-LTR4.5 of the Rules.

10. The appellant complains that the judge wrongly referred to her mother-in-law as her mother in paragraph 27. That is correct, but is clearly a typo as the judge had correctly set out earlier in paragraph 26 that she and her partner “live with his mother who is now 75” and the mother referred to in paragraph 27 can only have been this woman, not the appellant’s mother.
11. The appellant appears to argue that the fact that the appellant’s mother was now 76, not in very good health and “not strong enough to travel” made the decision to refuse her leave disproportionate, but there was no medical evidence before the judge that the mother-in-law was unfit to travel and hence there was no error in the judge concluding she could travel if called upon.
12. The appellant’s grounds state that the judge made no mention of the death of her auntie, but there was no evidence about this before the judge and the grounds fail to substantiate it to any degree.
13. The appellant states that the judge wrongly described the appellant’s partner as a businessman when he was employed, but that is how she described him in her

application and it was the basis of her claim that he earned sufficient to support the appellant. She had provided his employment letter and pay slips.

14. The appellant maintains that the judge did not mention that she was born in Borno State, but the judge's assessment was in relation to Nigeria generally and in the absence of any evidence of risk on return to the appellant anywhere in Nigeria, that was sufficient.
15. I have perused the judge's decision for myself but can discern no error of any kind. On the evidence before the judge the appellant could not meet the requirements of the Immigration Rules and had failed to show there were compelling circumstances outside the Rules to warrant a grant of leave.

No anonymity direction is made.

Signed

Date: 9 July 2019

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a large, looped 'y'.

Dr H H Storey
Judge of the Upper Tribunal