Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/22235/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 November 2019	**On 25 November 2019**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

OLUWANIKE [O]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Nicolaou, Counsel, instructed by Ramfel
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant is a citizen of Nigeria born on 7 January 1981. She entered the UK in 2009 as a student. Her leave to remain in the UK was extended on several occasions and on 10 July 2015 she was granted leave as a Tier 2 (General) Migrant until 26 August 2017.

On 2 August 2017 her sponsor's licence was revoked (through no fault of the appellant) and on 4 August 2017 her application for indefinite leave to remain (which had been made on that date) was refused. The decision was maintained on 12 September 2017 following administrative review.

On 26 September 2017 the appellant made a human rights claim. This was refused on 16 October 2018.

The appellant then appealed to the First-tier Tribunal, where her appeal was heard by Judge of the First-tier Tribunal Black ("the judge"). In a decision promulgated on 19 June 2019 ("the decision") the judge dismissed the appeal. The appellant is now appealing against that decision.

The appellant's claim

The appellant claims that removing her to Nigeria would breach both Article 3 and Article 8 of the ECHR.

Her Article 3 claim is based on her medical condition: limb girdle muscular dystrophy type 2A. The condition, and its effect on the appellant, are summarised at paragraphs 15 – 16 of the decision, where it is stated:

> "15. In 2014 the appellant's diagnosis of limb girdle muscular dystrophy type 2A was confirmed. It is a progressive muscle wasting disease. There is no cure or specific treatment but regular monitoring of bodily and respiratory functions is required.
>
> 16. The appellant has been wheelchair-bound for ten years; she is unable to walk. The condition affects her upper limbs which are painful to move. It is difficult for the appellant to stand or lift herself off chairs and from the seat of her wheelchair. She uses structures nearby for support. She has difficulty with movement and suffers low back pain. She is also prone to suffering fatigue and weakness. She does not take analgesia."

The appellant receives community therapy and attends a neuromuscular clinic at the Royal London Hospital where she is under the care of a consultant neurologist. She also regularly attends appointments with other healthcare professionals and receives support from the UK charity Muscular Dystrophy UK.

To support her claim, the appellant provided correspondence from a consultant orthopaedic surgeon at Lagos University Teaching Hospital, who stated, inter alia, that patients with muscular dystrophy in Nigeria are managed symptomatically and assisted with physiotherapy and assistive devices but there are no supportive community services.

The appellant claims that she would have great difficulty functioning in Nigeria because of the absence of wheelchair-accessible services; and the absence of support for people with her condition. She claims that she would be unable to rely on support from her family, as her brother has moved away and her parents are elderly, in poor health and have limited financial income.

Whilst in the UK, the appellant has studied law, qualified as a solicitor, and worked in several professional jobs. She maintains that if she is given permission to continue living in the UK she will continue to have a productive life; whereas if she is returned to Nigeria she would be unable to do so as her disability would prevent her from obtaining work (both because of her physical impediment to accessing buildings with her wheelchair and because of societal

discrimination) and having a meaningful private life, given in particular the limited accessibility of public buildings for wheelchair users.

Decision of First-tier Tribunal

The judge firstly considered whether removal of the appellant would breach Article 3 ECHR, and concluded that it would not. The judge stated at paragraph 46:

> "The appellant has not demonstrated that Article 3 is engaged by the respondent's decision. She would continue to receive medical treatment on return, albeit she would not have access to community-based support. She would be able to live with her family if it were adapted to suit her needs. Her brother is working and there is no suggestion in the evidence that he and their parents would not be able to afford to accommodate and maintain the appellant. She would be able to use her wheelchair in Nigeria. While she would lose some of her independence and quality of life, she has not demonstrated she would be destitute on return. She would have access to healthcare, albeit not to the same standard as in the UK. I am unable to find that Article 3 is engaged by the decision. Her circumstances on return do not meet the high threshold required."

The judge then turned to consider Article 8 ECHR, and in that context firstly considered whether there would be very significant obstacles to her integration into Nigeria for the purposes of paragraph 276ADE(1)(vi) of the Immigration Rules. The judge directed herself to the guidance on the term integration in the Court of Appeal judgments *SSHD v Kamara* [2016] EWCA Civ 813 and *Sanambar v SSHD* [2017] EWCA Civ 1284.

The judge found that the appellant had not demonstrated there would be very significant hurdles to integration, given that

she would have access to medical treatment, including physiotherapy and assistive devices, albeit not to the specialist standards she currently receives in the UK and not in a community setting;

she would have family support and the support of friends;

she could attend church in Nigeria;

she would not be destitute; and

in due course she would be able to obtain employment, albeit it may take time for her to find work which accommodates her disability.

At paragraph 56 the judge stated:

> "… She would have access to medical treatment, including physiotherapy and assistive devices albeit not to the specialist standard she currently receives in the UK. She would have family support and the support of friends she could attend church in Nigeria. She would not be destitute. In due course, she would be able to find in deployment albeit may take time for the to find work which accommodates a disability. She would thus have an income.

The judge then considered Article 8 outside the Immigration Rules and whether removal would be disproportionate. She directed herself to the factors specified in Part 5A of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). At paragraph 61 the judge found that the appellant had established her life at a time when her immigration status was precarious and therefore little weight should be given to it under Section 117B(5) of the 2002 Act. The judge also had regard to the appellant's ability to speak English and that if she were given permission to remain in the UK she would return to work as she had done previously. The judge also had regard to the appellant having "made the most of her time in the UK to gain academic achievement and contribute to society in the UK by working and undertaking voluntarily work here". The judge concluded that the public interest in the maintenance of effective immigration control outweighed the interference with the appellant's private life, including her health and its impact on her ability to live day-to-day in Nigeria, and on that basis dismissed the appeal under Article 8.

Grounds of Appeal

The grounds of appeal raise numerous discrete points about the decision, which are grouped together in three different grounds. The first ground challenges the decision in respect of paragraph 276ADE(1)(vi). The second ground challenges the decision in respect of Article 8 "outside the Rules". The third ground of appeal challenges the decision in respect of Article 3.

My decision will follow the same structure as the grounds, and deal with each of the three categories of challenge in turn.

Paragraph 276ADE(1)(vi): The "Very Significant Obstacles to Integration" Test

Before addressing the specific points raised in the grounds of appeal and in submissions by Ms Nicolaou, I firstly make the observation that the judge directed herself correctly to the legal test and relevant Court of Appeal authorities.

It is also readily evident from the decision that the judge had regard to a broad range of factors when considering the obstacles the appellant would face integrating into Nigeria. This is summarised at paragraph 56 (cited above), where the judge referred to (a) the appellant's access to medical treatment, including physiotherapy and assistive devices; (b) the extent of support from family and friends; (c) her ability to attend church in Nigeria; (e) that she would not be destitute and (f) that she would be able to find employment, albeit that it may take time to find an employer where her disability could be accommodated.

I now turn to consider the specific points raised by Ms Nicolaou in the grounds.

The grounds argue that the judge placed extensive reliance on medical and physiotherapy treatment being available but did not grapple with the question of very significant obstacles in a meaningful way. I am not persuaded by this

submission as it is clear from the decision that the judge has had regard to the evidence of treatment available in Nigeria and has appreciated that there would not be community services available but that there would be services available at a hospital. There is no basis to the assertion that the judge focussed only on the medical issues as it is clear that the judge had regard to a wide range of factors and did not limit her assessment to the availability of medical and physiotherapy treatment (see paragraph 56 of the decision).

The grounds argue that the judge improperly drew an adverse inference from a friend of the appellant in the UK (Ms Alalade) not expressing an opinion in her statement on whether the appellant would have difficulty in Nigeria. This criticism of the decision arises from paragraph 42, where the judge, after commenting that Ms Alalade has been involved in the appellant's day-to-day welfare in the UK, stated "she does not assert the appellant would have difficulties on return to Nigeria". As submitted by Mr Clarke, the judge did not state at paragraph 42 that she drew an adverse inference from Ms Alalade not expressing a view on difficulties the appellant might face in Nigeria. The judge was simply observing that Ms Alalade was silent on this issue. There is nothing in paragraph 42 of the decision to suggest that the judge has mistakenly taken the view that Ms Alalade is someone who can speak authoritatively on the position in Nigeria or that the absence of comment on this undermined appellant's case.

The appellant also submitted that the judge set the bar on "very significant obstacles" too high, by referring to the fact that the appellant would not be "destitute on return". The difficulty with this argument is that it is clear, from reading the decision as a whole, that the judge understood the correct test, as summarised in *Kamara* (which is quoted in the decision), and that a test of destitution was not applied. Rather, the judge's finding that the appellant would not be destitute was one of several factors that were found to be relevant to the question of whether there would be very significant obstacles. The judge was entitled to take into account that the appellant would be able to live with her parents, and therefore would not be destitute, as one of the considerations in the evaluation of obstacles to integration.

The grounds also contend that the judge erred by having regard to the appellant's experiences before leaving Nigeria ten years ago without noting that there had been significant changes. I am not persuaded that there is merit to this argument. The judge gave multiple reasons for finding the appellant could integrate into Nigeria. As explained in *Kamara*, the idea of integration calls for a broad evaluative judgment, and in making this evaluation the judge was entitled to have regard to the appellant's circumstances in Nigeria prior to leaving the country. Further, as submitted by Mr Clarke, it is clear from the decision (at paragraph 39) that the judge had regard to the fact that circumstances had changed since 2009.

The grounds also contend that there was a failure to consider evidence showing non-availability of some treatment in Nigeria and the lack of community support and treatment in Nigeria. The difficulty with this argument is that the judge has made a clear finding about the lack of community care in

Nigeria and that the level of medical care would not be as good as that available in the UK. There is therefore no merit to this submission.

The grounds submit that the judge treated as a "determinative" factor that the appellant can avail herself of financial assistance from her family. I am not persuaded by this argument. Firstly, it is clear that family support was treated as one of several considerations and not a determinative factor. Secondly, the judge was entitled to have regard to the fact that the appellant's family provided her with financial support when she came to study in the UK (even if this was many years earlier) and that accommodations could be made to her parents' home in order for her to reside there. As submitted by Mr Clarke, there was no evidence before the judge to show that adaptations to the home would be prohibitively expensive or that the people who currently assist the appellant in the UK could not provide her with some financial support.

A further argument made in the grounds is that the judge made inconsistent findings about the appellant's employment prospects and the accessibility difficulties in Nigeria. I am also not persuaded by this argument. The judge acknowledged that there are difficulties faced by disabled people in public buildings and facilities in Nigeria but found that the appellant would be able to obtain support from family and friends if she was unable to obtain access to a particular location and that she could plan her excursions to minimise difficulties. The judge was also entitled to have regard to the skills and experience the appellant acquired in the UK as factors that would assist her in overcoming some of the challenges she would face as a disabled person in the workforce. There was no evidence before the judge to support the contention that a person with the appellant's disability would be unable to obtain any work in Nigeria or that there are not places of work which are accessible to a person in a wheelchair (even if many places are not) and the judge was entitled to find that the appellant would be able, in time, to obtain work despite the additional challenges she would face because of her disability.

The grounds also contend that the evidence does not support the judge's finding that the appellant would be fit to fly. This argument, made in the context of the assessment of whether there would be "very significant obstacles to integration" is misconceived as any difficulty in flying to Nigeria is irrelevant to the question of whether she would be able to integrate once in Nigeria.

The grounds contend, also, that inconsistent findings were made relating to the appellant's ability to carry out day-to-day activities, as the judge found that the appellant would be able to use her wheelchair whilst also accepting that she would need to rely on her family. This ground is misconceived as it fails to appreciate that the judge has carefully engaged with the evidence, and has reached the view that despite the difficulties the appellant would face with her wheelchair, she would be able to function by careful planning and relying on family and friends. Contrary to the position taken in the grounds, there is no inconsistency in these findings by the judge.

Article 8 "Outside the Rules"

The grounds submit that the judge failed to have proper regard to the appellant's immigration history, which ought to have been treated as a positive factor in her favour. The grounds state that if the appellant had been afforded a right of appeal to the refusal of her indefinite leave to remain application she would by the date of the hearing have reached ten years' continuous lawful residence and the only reason her application was unsuccessful was the loss by her employer of its licence.

Mr Clarke responded to this argument by observing that the indefinite leave to remain application was made in August 2017, which was less than ten years from the date the appellant had entered the UK, and he submitted that this argument is speculative.

Although the appellant has a good immigration history in that she has made applications in a timely manner, not abused the system, and the loss of her sponsor's licence is in no way a reflection on her; it remains the case that, as found by the judge, she was unable to satisfy the requirements of the Immigration Rules.

In respect of the appellant's immigration history and status, the judge was entitled (indeed, required) to have regard to sections 117B(1) and 117B(5) of the 2002 Act.

Section117B(1) of the 2002 Act required the judge to give consideration to the maintenance of effective immigration controls. As the appellant had ceased to have leave to remain in the UK and did not meet the criteria of the Immigration Rules, the judge was entitled, notwithstanding the absence of a poor immigration history, to treat this as a factor weighing against the appellant.

Under section 117B(5), the judge was required to give little weight to the appellant's private life given that it was established when her immigration status was precarious. The judge followed section 117B(5), and it was not an error of law to do so.

There is no basis upon which the conclusion in respect of article 8 could be described as irrational or perverse. It was consistent with the evidence for the judge to find that in Nigeria the appellant would have access to medical treatment, family support, accommodation, and the realistic opportunity to obtain employment in Nigeria; as well as that her private life in the UK had been established at a time when her immigration status was precarious and she had no basis for believing she was entitled to permanently settle in the UK. Having made these findings, it was open to the judge to conclude that removal would not be disproportionate under Article 8.

Article 3

The appellant argues that, following *AM (Zimbabwe)* [2018] EWCA Civ 64, there has been a "modest relaxation" in the threshold for Article 3 cases and the judge fell into error by dismissing the importance of community-based support, which would not be available to the appellant in Nigeria.

This argument is misconceived. *AM (Zimbabwe)* does not indicate a relaxation of the high threshold in medical cases; on the contrary, it found that *N v SSHD* [2005] UKHL 31 still applies and that any relaxation to the threshold in *N* that might flow from *Paposhvili v Belgium* would only be modest.

The circumstances of the appellant do not, in any event, come even close to the threshold in either *Paposhvili* or *N* as the evidence does not show that she would suffer a serious or rapid decline in her health as a consequence of moving to Nigeria. The evidence before the First-tier Tribunal showed that treatment for the appellant's condition, in the form of physiotherapy and assistive devices, is in fact available in Nigeria, although not in the setting the appellant would prefer and not to the same standard she receives in the UK. Moreover, the nature of the appellant's condition is not such that she is dependent on life sustaining medication and even in the absence of any treatment in Nigeria she would not face the rapid decline in her health that would be necessary to meet the threshold in either *Paposhvili* or *N*.

Notice of Decision

The appeal is dismissed.

The decision of the First-tier Tribunal does not contain a material error of law and stands.

No anonymity direction is made.

Signed

Upper Tribunal Judge Sheridan Dated: 21 November 2019