



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

Appeal Number: PA/03618/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 11 October 2019**

**Decision & Reasons Promulgated
On 16 October 2019**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**JULIANA [D]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Shoye of Counsel, instructed by CW Law Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Oliver promulgated on 30 May 2019, in which the Appellant's appeal against the decision to refuse her protection and human rights claims dated 8 April 2019 was dismissed.
2. The Appellant is a national of Nigeria, born on 16 July 1938, who claims to have been in the United Kingdom unlawfully since 2003. Although the most recent application to the Respondent was a protection claim, this was not pursued on appeal before the First-tier Tribunal, where reliance

was placed solely on the right to respect for private and family life under Article 8 of the European Convention on Human Rights.

3. The Respondent refused the human rights aspect of the application the basis that the Appellant did not have a partner in the United Kingdom to satisfy the requirements of Appendix FM of the Immigration Rules, nor did she have any dependent children under the age of 18. The Appellant did not meet the requirements of paragraph 276ADE of the Immigration Rules for a grant of leave to remain on the basis of private life. The Appellant had an adult daughter in Nigeria and family in the United Kingdom who could continue to support her on her return. The Respondent did not consider that there were any exceptional circumstances and in particular that the Appellant's health conditions could be treated in Nigeria where healthcare was available.
4. Judge Oliver dismissed the appeal in a decision promulgated on 30 May 2019 on all grounds, the reasons for which I return to below.

The appeal

5. The Appellant appeals on five grounds, which can be summarised as follows. First, that the First-tier Tribunal failed to make any express findings as to whether the Appellant enjoyed family life with her adult children in the United Kingdom on the grounds of dependency and care provided by them for her, whether or not it is care which would normally be expected in old age. Secondly, that the First-tier Tribunal failed in any event to attach sufficient weight to the Appellant's private life established in the United Kingdom. Thirdly, that the First-tier Tribunal failed to undertake an assessment of the Appellant's private and family life in accordance with the five stage process in Razgar, including a failure to consider whether the Appellant would meet the requirements of Appendix FM as an adult dependent relative. Fourthly, that the First-tier Tribunal relied upon matters as adverse to the Appellant which had not been canvassed with her at the hearing, primarily whether she had paid tax in the United Kingdom or whether she had paid for health services used during her time here. Finally, that the First-tier Tribunal applied the wrong standard of proof, requiring the Appellant's claim to be established beyond the criminal standard rather than on the balance of probabilities.
6. At the oral hearing, although the Respondent continued to oppose the appeal, Mr Lindsay appropriately observed that the findings made in paragraph 31 of the decision were capable of substantiating a finding that family life existed but there was no express consideration of or finding on the same, with the final conclusion only expressly referring to established private life.

Findings and reasons

7. In this case, there is a clear error of law by the First-tier Tribunal in its failure to make any findings at all on whether the Appellant had

established family life in the United Kingdom, particularly in circumstances where there was at least a prima facie case capable of supporting such a finding.

8. In paragraph 31 of the decision, Judge Oliver found as follows:

“Her claim now rests upon her article 8 rights. She is 80 years old and has no partner. She lives with one of her children and sees the others regularly. Although these are relationships between grown adults, and there are clearly serious bonds developed over many years. I accept that the appellant has physical needs, many of which are provided by the daughter with whom she lives. These, however, are the ills of old age and all are common ailments. They cannot be viewed as serious enough to merit consideration under exceptional compassionate circumstances.”
9. These findings themselves raise an obvious question as to whether family life has been established between adults, but there is no consideration of the same by the First-tier Tribunal, who simply jump to a conclusion that the Appellant’s needs, as a result of old age, do not amount to exceptional or compassionate circumstances. That fails to apply any structured or reasoned approach and fails to make adequate findings of fact as to the existence or otherwise of family life in the United Kingdom, which would have to form part of the balancing exercise as to whether the Appellant’s removal would be a disproportionate interference with her right to respect for private and family life. There is a consequential error of law in the balancing exercise undertaken in paragraph 34 of the decision.
10. The error of law is material as it is capable of affecting the outcome of the appeal and for that reason the decision of the First-tier Tribunal must be set aside and remade. Further extensive findings of fact are required as to the Appellant’s family and private life, for a lawful assessment of whether the Appellant’s removal would be a disproportionate interference with her right to respect for private and family life. For this reason, it is appropriate to remit the appeal to be heard de novo in the First-tier Tribunal, before any judge except Judge Oliver.
11. In these circumstances, it is not necessary to consider the remaining grounds of appeal in any detail. However, I would also find an error of law in the First-tier Tribunal’s failure to consider whether the Appellant could meet any of the requirements of the Immigration Rules for a grant of leave to remain, which would inform part of the public interest to be included in the balancing exercise.
12. As to the weight to be attached to the Appellant’s private life, this is a matter for the First-tier Tribunal having taken into account all relevant evidence. As expressly stated in paragraph 34, the Appellant’s strong private life with her children must be given significant weight and in all of the circumstances, it is difficult to see what greater weight the Judge should have given beyond this. There is no error of law in the weight

attached to private life in the circumstances. There is also no basis upon which it can be said that the Judge has applied a standard of proof which is higher than beyond reasonable doubt, i.e. beyond the criminal standard, as opposed to the balance of probabilities and I find no error of law on this ground. However, for the reasons are given above, the decision of the First-tier Tribunal contains material errors of law which require the decision to be set aside in any event.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remit the appeal to the First-tier Tribunal (Hatton Cross hearing centre), to be heard de novo before any judge except Judge Oliver.

No anonymity direction is made.

Signed



Date

11th October 2019

Upper Tribunal Judge Jackson