Upper Tribunal
(Immigration and Asylum Chamber)
Appeal Number:
AA/13555/2015

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 20 April, 2017	**On 3 May, 2017**

Before

UPPER TRIBUNAL JUDGE CHALKLEY

Between

MS JANET BANWO ASHOKEJI
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person - Unrepresented
For the Respondent: Mr G Harrison, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria who was born on 17th January, 1976.

2. The appellant claimed to have entered the United Kingdom unlawfully on 1st January, 2005. She made a number of applications to regularise her stay, all of which were refused. Finally, the appellant made application for asylum on 21st January, 2015. The respondent refused that application in a refusal letter dated 1st December, 2015. The appellant appealed that decision to the First-tier Tribunal and her appeal was heard in Manchester by First-tier Tribunal Judge Lever on 8th October, 2016.

3. In a determination promulgated on 1st November 2016, Judge Lever carefully considered all the documentary evidence and oral evidence he

heard and concluded that there was, *"no credibility whatsoever in the appellant's claim"*. He found that it was entirely lacking in credibility to suggest that, if returned to Nigeria, she would face a realistic risk of coming into contact with those she claimed who had trafficked her, or her agent.

4. In referring to the appellant's witness statement she made in support of her asylum claim the judge said:-

> *"The somewhat dramatic contents of the witness statement would have required it to be treated with an element of caution but I need not do so, nor do I need to consider the perfectly valid findings made by the respondent in the refusal letter. The simple answer is that the appellant has accepted that the witness statement she made in support of and the basis of her claim for asylum is a false statement."*

5. The judge also recorded that the appellant accepted that information she provided in an earlier application for an EEA residence card was also a false application.

6. In respect of the appellant's asylum claim the judge concluded at paragraph 26:

> *"I have no hesitation in finding there is not a shred of credibility attaching to the appellant's various claims and there is no risk of persecution either for a Convention reason or a breach of her protected rights under the ECHR if she is returned to Nigeria. The Home Office refusal letter is a lengthy and detailed letter that deals with each and every aspect of her asylum claim and having considered the evidence carefully I endorse those findings made by the respondent."*

7. The judge then went on to consider the appellant's Article 8 claim and was satisfied that she did not meet the requirements of Appendix FM of Statement of Changes in Immigration Rules, HC 395, as amended ("the Immigration Rules"). He noted that she did not meet the requirements of paragraph 276ADE(1)(iii) and did not accept, for the purposes of paragraph 276ADE(1)(vi) that there would be significant obstacles to the appellant returning to Nigeria, a country where she has lived for the majority of her life; she speaks both Yoruba and English and has both immediate and extended family living in that country. There was no evidence before him that the appellant could not live with a member of that family or extended family or with friends until she had resettled in Nigeria and the fact that she was returning with a child did not in itself, or in the circumstances of this case, provide any further significant obstacles to her integration back into Nigeria.

8. The judge found that there was nothing about the appellant or her circumstances which could properly give him cause to allow her Article 8 claim outwith the Immigration Rules. He considered Section 55 of the Borders Act 2009 and noted that the appellant's son was born on 17th January, 2007 and had been living in the United Kingdom for more than seven years.

9. He noted that from 2008 the appellant made a number of applications to regularise her stay which had all been refused and which were all without merit. He considered Section 117B of the 2002 Act and acknowledged

that the appellant's son was born and had lived all his life in the United Kingdom. He noted from the documentary evidence the child appeared to be doing well at school and there were no abnormalities or concerns in his education or upbringing and nothing to indicate that a change of school or environment would necessarily cause any serious problems.

10. The appellant's father was said to be Nigerian and the appellant converses with her son in both English and Yoruba. There was no evidence before the judge to suggest that the appellant's son would not obtain an education in Nigeria and no evidence to support the assumption that education in the United Kingdom was necessarily any better than that available to the appellant's son in Nigeria. There were no health issues and again nothing to suggest that any healthcare issues the appellant or her son have could not be properly addressed in Nigeria.

11. The appellant has two other children living in Nigeria and the judge thought it important that the appellant's son should if possible have contact with and the friendship of those stepsiblings. He concluded that the best interests of the appellant's son were to go to Nigeria with his mother. He concluded that such a requirement was not unreasonable within the terms of Section 117. He noted that the appellant would no doubt vehemently disagree with his view but that it was clear that she was looking at her circumstances for her own needs, rather than more altruistically considering the best way forward for her child. He dismissed the appeal on asylum grounds, found that the appellant was not entitled to humanitarian protection and dismissed the appellant's appeal based on her human rights. The appellant sought and obtained permission to appeal.

12. Her grounds of appeal are as follows:-

> *"My son was born in the UK and is 9 years old. He will turn 10 next month and can register as British. The judge has failed to attach sufficient weight to the time my son has spent in the UK above the age of 7.*
>
> *The judge has mentioned the Home Office delay but not assessed it as a factor in balancing when assessing reasonableness.*
>
> *The judge has only considered factors going towards why it would be reasonable for my son to leave but none why he should stay. This is a material error of law."*

13. At the hearing before me the appellant said that she did not understand English. Fortunately a Yoruba interpreter had been booked. I ensured that she and he both understood each other. I explained to the appellant the purpose of today's hearing. She confirmed to me that she understood its purpose. I asked her if she had any questions of me and she replied that she had none. I asked her if there was anything she wanted to say to me and she told me that there was nothing. I reminded her that this was her opportunity to persuade me that there were errors of law in the judge's determination. She replied saying that she was asking for compassion. Her child was born in the United Kingdom, he is 10 years old, his name is D and he was born on 17th January, 2007. His father is absent.

His father left when D was 6 months old. D has never heard his father's voice. The appellant said that she had had no contact with D's father since D was 6 months old. D's father is a Nigerian.

14. The appellant confirmed that she speaks to her son using mainly Yoruba which he understands but, she pointed out, he does not speak Yoruba. She told me, however, that she understands him.

15. I again asked the appellant if she could please tell me why she thought the judge had erred in his decision. She replied that her lawyer told her that her case had been dismissed but that she had the right of appeal. She told me she asked for compassion.

16. Mr Harrison told me that the determination was full and comprehensive and clearly considered all the evidence. It made a finding that it was reasonable for the child to relocate to Nigeria with his mother. The judge was clearly alert to the child's length of residence in the United Kingdom and his degree of integration but there were no unreasonable barriers to informing a private and family life in Nigeria. The first named appellant's use of deception not once but on several occasions was a notable factor.

17. The appellant said that it was not correct that she would do anything to remain in the United Kingdom. She just wanted to regularise her stay. She confirmed that she put forward false information in her asylum claim. She also confirmed that she put forward false information in an application for an EEA residence card. She again asked that she shown compassion.

18. I reserved my determination.

19. I have carefully read the determination of First-tier Tribunal Judge Lever. It is a very thorough and detailed determination and demonstrates that the judge carefully considered all the evidence placed before him before making his finding that it was reasonable for the appellant's child to relocate to Nigeria with his mother. He had before him the appellant's substantial bundle, together with the respondent's bundle comprising immigration history, the documents listed at Folios A to C and the Secretary of State's refusal letter. The judge made a careful note of the appellant's oral evidence, during which the appellant confirmed that her prior witness statement speaking of the death of her sister was false and the entire witness statement untrue. The judge also noted that the appellant accepted that the application she made in 2008 for an EEA residence card was a false application. Having considered all the evidence he reached the conclusion that the appellant's claim for asylum was lacking in credibility and that there was no real risk of the appellant ever coming into contact with either or both of those individuals who, she claimed, had been responsible for her being trafficked. In dismissing the appellant's Article 8 claim there appears to have been no evidence before the judge which could have led him to believe that there would be any significant obstacles to the appellant returning to Nigeria. He noted that she still had family and extended family and friends living in Nigeria but she speaks both English and Yoruba and that she has spent the majority of

her life in that country. Similarly, the judge was entitled to find that there was nothing about the appellant or her circumstances which could properly allow him to allow the appellant's Article 8 appeal outwith the Immigration Rules.

20. The judge went on to consider Section 55 of the 2009 Act and Section 117B of the 2002 Act.

21. The judge noted that the education documents in evidence disclosed nothing dramatic and that D appeared to be doing well, has the normal interests, friendships and social skills that majority of children of his age exhibit. He also speaks English and some Yoruba, both languages spoken in Nigeria, he has two stepsiblings in Nigeria. I believe that he has taken fully into account all the evidence before him and that he was perfectly entitled to conclude in the circumstances that it would not be unreasonable to expect the appellant's child to leave the United Kingdom in company with his mother and to return to her home country of Nigeria.

22. I have concluded that the making of the determination by First-tier Tribunal Judge Lever did not involve the making of an error of law. I uphold the judge's determination. The appellant's asylum appeal is dismissed. The appellant's humanitarian protection appeal is dismissed and the appellant's human rights claim is also dismissed.

Richard Chalkley

A Judge of the Upper Tribunal Date 30th April 2017

TO THE RESPONDENT
FEE AWARD

There is no fee award.

Richard Chalkley

A Judge of the Upper Tribunal