Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/08054/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 October 2018	**On 7 November 2018**

Before

UPPER TRIBUNAL JUDGE WARR

Between

GRACE IFESINACHI OGBONNAYA
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss O Ukachi-Lois (Counsel)
For the Respondent: Mr L Tarlow (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 5 November 1991. She appeals the decision on 12 July 2017 to refuse her application for leave to remain in the United Kingdom on the basis of her private life under Article 8. The appellant arrived in this country on 18 January 2001 with an exemption from leave as the child of a diplomat, valid to 27 October 2004. An application to remain as the dependent child of a highly skilled migrant was refused on 19 August 2005.

2. It is the respondent's case that the appellant left the United Kingdom on 3 June 2005 for Nigeria and returned on 2 August 2006 with leave as a

highly skilled migrant dependant valid to 15 July 2008 and extended to 26 June 2012.

3. The respondent relied on the entry stamps in the appellant's passport to support the view that the appellant had returned to Nigeria and remained there between 2005 and 2006. Further applications for leave to remain made between 2012 and 2014 were all refused by the Secretary of State and her appeal was dismissed from the last of the refusals following a hearing on 5 May 2015 before First-tier Judge Freer.

4. The appellant's case is that she had never left the United Kingdom as the Secretary of State had maintained. Her appeal came before a First-tier Judge on 8 June 2018.

5. The judge considered the material relied upon by the appellant to show that she had remained in full-time education at a school which had since closed down between September 2003 and 31 August 2011 when the appellant had completed her studies.

6. The judge records in paragraph 9 of his determination that it was only when her application had been refused in September 2015 that the appellant had learned that the Home Office had believed that she had been out of the country between 2005 and August 2006. Her case was that she had lived continuously in the United Kingdom from 18 January 2001. She had been able to obtain an attendance record showing that she had attended from September 2003 until June 2008 and had then attended the sixth form until 2011.

7. The determination in relation to the appellant's case under the Rules concludes as follows:

> "10. In cross-examination the appellant was taken to her passport. She recalled the American visa, but could not recall returning to Nigeria in 2005-2006 because she had not gone. She had first seen the documents a couple of months before the hearing and her reaction on seeing them was that they were not true. It was pointed out that she had not expressed this in her witness statement. She confirmed that she had continued her relationship with her teacher, Dr Hartney, after she left school. Dr Hartney had said it was ridiculous to suggest that she had not been there throughout. She had been in contact with the headteacher. She had tried unsuccessfully to contact her father in 2015. Her friend would not be able to support her in Nigeria. She had not enquired about rent or work there. She had not attempted to contact her mother or sister in any shape or form. It had upset them when she made her own separate application. They were still living in the same place.
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> 11. Dr Hartney submitted a short witness statement, explaining that she had met the appellant when she taught religious studies at the school. To the best of her knowledge the appellant did not

leave the country for a year from 2005 to 2006. She observed that it would be very noticeable for any student to miss such a significant amount of time in their education. She added that she might not be able to attend because of her chronic migraines. In the event, she was unable to attend and it was unfortunate that her evidence could not be tested.

12. The onus is on the appellant in immigration appeals to prove his or her case on the balance of probabilities, subject to the legal principle that 'he who asserts must prove' which applies where the respondent asserts deception.

13. It is difficult to see how the two date stamps have been innocently and falsely inserted into the passport, but that does not mean that the appellant was necessarily out of the country throughout all that period. The memory of Mrs Hartney may be imperfect, but it is difficult to avoid the message of the extract from the register that the appellant was present during much of the disputed year. The appellant at the time was too young to be held responsible for her own movements, but she now states categorically that she never left the United Kingdom. She was, however, 23 when she gave evidence at the joint appeal with her mother and sister on 24 April 2015. All three of them gave evidence on that occasion, having made witness statements. There is no suggestion of any disagreement that they stayed in Nigeria for about a year, as found by the tribunal. That cannot sit with the appellant's assertion now that she never left the United Kingdom. At the time when she left in June 2005 she was without leave.

14. In these circumstances I find that the appellant fails to meet the requirements of paragraph 276ADE. There are no bright lines and I find no very significant obstacles to her integration back into Nigeria."

8. The judge dismissed the appeal on human rights grounds in the light of his findings. There was an application for permission to appeal. In granting permission the First-tier Tribunal acknowledged that the First-tier Judge had been entitled to take into account the evidence given at the hearing in April 2015 however subsequent to that appeal there had been evidence before the judge to suggest that the appellant was in the UK during that period which was not referred to by him. Permission to appeal was accordingly granted.

9. Counsel submitted that the judge had failed to consider all the evidence before him. She referred to the bundle of material that had been lodged before the First-tier Judge. She referred to letters to the appellant's parents at pages 22 and 23 of the bundle. There was an attendance record for the appellant set out at page E8 of the respondent's bundle – material referred to at paragraph 3 of the judge's decision. It was submitted that the material relied upon covered the period between the

disputed dates. Reference was made to a school census at page 14 of the appellant's documents. It was submitted that the appellant's case was supported by independent evidence. In the determination of First-tier Judge Freer on 5 May 2015 at paragraph 16 it had been said that the family had lived in the UK since 18 January 2001 "with the exception of the period 3 June 2005 to 2 August 2006". However the appellant had not known about this and she had always been in the UK and had been a minor at the material time. Reference was made to the case of **Devaseelan [2002] UKIAT 00702** but the two appeals it was submitted were different. The appeal before Judge Freer had been a combined appeal with other members of the family. Of course the stamps in the passport were compelling evidence.

10. Mr Tarlow submitted that the First-tier Judge had carefully considered the evidence and had noted, for example, that the appellant's school had since closed down. Issues of fact were ultimately for the judge to determine and it had been acknowledged that the case of **Devaseelan** played a part in the assessment. The point made by the judge in paragraph 13 of the decision about the date stamps in the passport remained valid. The stamps were powerful evidence that the appellant was not in the UK at the material time. The judge did not meet the requirements of the Rules and there was no material error of law in the determination. In reply Counsel submitted that the judge had made confused findings in referring in paragraph 13 to it being difficult to avoid the message of the extract from the register that the appellant was present during much of the disputed year. The findings were slightly confusing. It seemed to be accepted that the appellant had been in the UK for part of the disputed period. There was an error of law in the decision.

11. At the conclusion of the submissions I reserved my decision. I can of course only interfere with the decision of the First-tier Judge if it was flawed in law.

12. In my view the reasoning of the First-tier Judge is clear and comprehensive. The judge for example sets out in paragraph 3 a full analysis of the appellant's attendance record. He notes the difficulties caused by the fact that the appellant's school had since closed down. He also makes a reference in the concluding lines of paragraph 3 to other documents which provided "small clues" that the appellant had been in the United Kingdom during parts of the challenged period.

13. It was not in my view incumbent on the judge to list every single document or piece of evidence before him. He took into account in paragraph 4 the claim that the appellant had been a minor between the disputed dates. He also had in mind the various character references given to the appellant as is clear from paragraph 6 of the decision. The judge had the benefit of hearing oral evidence from the appellant who was subject to cross-examination. The judge took into account the evidence of a witness statement provided by Dr Hartney who had been unable to attend the hearing. As is submitted by Mr Tarlow the judge's point in

relation to the passport stamps was a telling one. It was argued on behalf of the appellant that the judge's findings were unclear. In my view the judge did not arguably misdirect himself in noting that it was the appellant's case that she had never left the United Kingdom during the disputed period and there is nothing in the determination to indicate that the judge left any significant matter out of account in his deliberations. As the judge points out while she had been a minor during the disputed period she was very much an adult when she gave evidence at the joint hearing on 24 April 2015. All three parties had given evidence and had made witness statements and there was no suggestion as the judge records of any disagreement that the family had stayed in Nigeria for about a year.

14. In my view the judge reached his conclusions after a very careful, fair and balanced evaluation of the facts and that there is nothing unclear about his decision when it is read as a whole. In the light of the judge's findings he did not err in dismissing the appeal on human rights grounds.

15. For the reasons I have given the decision of the First-tier Judge stands and the appeal is dismissed.

Anonymity Order

The First-tier Judge made no anonymity order and I make none.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed Date: 29 October 2018

G Warr, Judge of the Upper Tribunal