



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

Appeal Number: HU/01092/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5<sup>th</sup> February 2019**

**Decision & Reasons  
Promulgated  
On 25<sup>th</sup> February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**JOY [O]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Georget, Counsel

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Nigeria born on 5<sup>th</sup> May 1950. The Appellant has an extensive immigration history dating back to 26<sup>th</sup> June 2009 when she arrived in the UK on a valid visit visa. The appeal in question follows an application lodged on 1<sup>st</sup> February 2016 when the Appellant made a human rights claim for leave to remain in the UK on the basis of her private life. That application was refused by Notice of Refusal dated 6<sup>th</sup> December 2017.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Keith sitting at Taylor House on 9<sup>th</sup> July 2018. In a decision and reasons promulgated on 23<sup>rd</sup> July 2018 the Appellant's appeal was dismissed.
3. Grounds of Appeal were lodged to the Upper Tribunal on 2<sup>nd</sup> August 2018. Those grounds contended:-
  - (1) That the First-tier Tribunal Judge had failed to give consideration to the psychiatric medical report of Dr Mohamed when reaching the decision to dismiss the appeal.
  - (2) That the judge had failed to give consideration to the witness statement of the Appellant's daughter Miss [LA].
  - (3) That the judge had made findings of fact which were insurmountable upon the information before him.
4. On 12<sup>th</sup> October 2018 First-tier Tribunal Judge Saffer refused permission to appeal. Renewed Grounds of Appeal were lodged on 25<sup>th</sup> October 2018. Those grounds are identical to those that were originally submitted.
5. On 2<sup>nd</sup> January 2019 Upper Tribunal Judge Grubb granted permission to appeal. Judge Grubb considered that it was arguable that the judge had erred in law by failing to take into account, on the basis that no reference was made to it, a psychiatric report from Dr Mahmood and written evidence from the Appellant's daughter in the UK. Judge Grubb considered that Ground 3 had less merits standing alone and that he would have been hesitant in granting permission on it but nevertheless did so as it was part of the overall issue raised in the grounds as to whether the judge had properly considered all the evidence in reaching his adverse findings.
6. On 1<sup>st</sup> February 2019 the Secretary of State lodged a Rule 24 response to the Grounds of Appeal. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed Counsel Mr Georget. The Secretary of State appears by his Home Office Presenting Officer Mr Melvin.

### **Submission/Discussion**

7. Mr Georget starts by commenting that it is accepted by the Secretary of State that there is no specific reference to the psychiatric evidence of Dr Mahmood and submits that the question thereafter arises as to whether that omission per se is material. He submits that it is. He comments that the judge has dealt extensively with the other medical evidence at paragraphs 29 to 32 but that Dr Mohamed's report is of vital evidence on the basis that he reports on the Appellant's reliance on her family and the impact that this has on her recovery. He acknowledges that had the Appellant been a fit healthy person that he might have difficulty in making

the submissions that he does but contends that this case is fact specific and refers to the Appellant's previous physical and mental history pointing out that she has previously been vulnerable and targeted by kidnappers in Nigeria. He submits that the family over here provide support and that the judge should have found that it was disproportionate to remove her from the UK. He specifically asked me to give due consideration to paragraphs 26, 29 and 30 of the judge's decision and he takes me to them. He points out that therein in particular at paragraph 30, reference is made in detail to the report of Dr Duggal and as to the medicines prescribed to the Appellant.

8. He submits that the judge has not considered the report of Dr Mohamed and as a result understates her difficulties and her need for support and dependency. He submits that this becomes relevant when findings are made that there is no family life beyond normal emotional ties.
9. He addresses briefly the other aspects. In particular he refers to the witness statement provided by the Appellant's daughter and ask that I read this carefully. He sets out that the judge thereafter gave consideration to whether or not networks would or would not be available to the Appellant in Nigeria and the judge found that there was a network available but he submits that that does not take into account properly the evidence of the Appellant's daughter in the UK. Overall, he submits that the judge has failed to provide full anxious scrutiny to the issues herein and he asks me to find that there are material errors of law and to remit the matter back to the First-tier Tribunal for rehearing.
10. Mr Melvin's response is to take me as his starting point to his detailed Rule 24 response and submits that the judge considered the medical evidence submitted for the hearing and that it was noted specifically at paragraph 26 of the determination that the judge states that he has "considered all of the evidence presented to me, whether I refer to it specifically or not." Thereafter the judge considers the medical evidence from paragraphs 29 to 34 of the determination addressing the June 2018 report from Sandmere Medical Practice and the report of Dr Duggal. The judge also makes reference to the orthopaedic report of Mr Bansal. The judge he submits concludes that with support from the family in the UK and the country information showing that medical facilities are available in Nigeria then the Appellant's medical needs to be catered for in her home country can be provided. He submits that the medical evidence has been properly assessed and that the judge has given due diligence to his analysis.
11. Further Mr Melvin points out that the report allegedly not considered is one that is now some two and a half to three years old and it does not take the issues any further. He submits that even if it is not specifically referred to any failure to do so is not material.
12. So far as the evidence of the Sponsor is concerned he takes me to paragraph 19 of the decision pointing out that the judge therein notes the evidence that is given by Miss [A] and that it is clear he submits that this is

an Appellant who prefers to live in the UK and that the judge was perfectly entitled to make findings that there are no exceptional circumstances. He reminds me that there was a four year gap for the Appellant living in Nigeria after the death of her husband prior to her coming to the UK and that she had been supported by different relatives out there and the concerns expressed by the First-tier Tribunal Judge were ones that the judge was entitled to make. Finally, he contends that the third ground is misleading in that the judge at page 28 had made adverse inferences in the evidence of events between 2005 and 2009 when the Sponsor's evidence revealed that other family members had been supporting her during that period and would be able to support her again on her return. He takes me to paragraphs 32 and 33 of the decision pointing out that the judge's findings therein were ones that the judge was entitled to make. He asked me to find that there are no material errors of law and to dismiss the appeal.

## **The Law**

13. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings on Error of Law**

15. The first thrust made by the Appellant's legal representatives relates to the specific failure of the First-tier Tribunal Judge to make reference to the report of Mr Mohamed. I accept that there is no direct reference to that report. However, I do not find that creates a material error of law. The failure to make specific reference has to be looked at in context. Firstly, at paragraph 26 the judge has made it absolutely clear that he has looked at

all the evidence whether he refers to it specifically in these findings or not. Secondly at paragraph 29 he states,

“I considered the medical evidence with which I was provided.”

He then proceeds to give a very detailed analysis of all the other medical evidence. I accept that he does not specifically mention Mr Mohamed’s report but I agree with the view expressed by Mr Melvin firstly, that whilst it is some two and a half to three years old, nothing has subsequently changed and secondly the other medical evidence adequately addresses the current position of the Appellant. The report of Mr Mohamed does not add a great deal to this appeal and certainly does not in my view constitute a material error in law by failing to make reference to it.

16. This is a judge who has given detailed findings in reaching his conclusions. Again, whilst he has not made reference to the witness statement of the Appellant’s daughter he has considered the witness evidence that was before him in detail and has made findings that he was entitled to. As Mr Melvin has submitted in his Rule 24 response it is unclear if the Appellant’s daughter was called to give evidence or even if she attended the hearing and importantly that witness statement gives very little insight into what happened in Nigeria in the four years between the Appellant’s husband’s death and her arrival on a visit visa or as to why the Appellant is dependent upon beyond normal emotional ties.
17. For all the above reasons I do not find any failure to make reference to it could in any way be considered material. The important fact is that the judge has considered the evidence and has made findings at paragraph 34 that the Appellant’s close family relationships in the UK do not extend beyond normal emotional ties. These are reasoned conclusions and ones the judge was entitled to make.
18. As Mr Melvin submits looking at this appeal holistically and given the offer of support from the UK, I agree with the submission that the decision of the First-tier Tribunal Judge is clearly sustainable in law. This is a judge who has carried out anxious scrutiny to the facts, looked at the evidence that was before him and made clear findings which are sustainable. Even if as I have stated above there is no specific reference to Mr Mohamed’s report, it is clear that the judge has had note of all the evidence that was before him in reaching his conclusion. In such circumstances the decision discloses no material error of law and the Appellant’s appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

### **Notice of Decision**

The decision of the First-tier Tribunal Judge contains no material error of law and the Appellant’s appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris