Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/12878/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 February 2019	**On 6 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

MRS JOY OFILI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs Huma Price, of Counsel instructed by Messrs ALC Solicitors
For the Respondent: Mr Stefan Kotas, Senior Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against a decision of Judge of the First-tier Tribunal Davidson who, in a determination promulgated on 18 May 2018, dismissed the appellant's appeal against the refusal of an application for leave to remain on human rights grounds.

2. The appellant is a national of Nigeria who was born in February 1960. She frequently visited Britain, entering last on 30 April 2005 as a visitor, and thereafter overstayed. Her human rights application was made in February 2016. The judge

heard evidence from the appellant, her nephew's wife, her sister-in-law and her brothers and noted the appellant's evidence which was that she was aged 45 when she came to Britain in 2005. She said that she had attempted to regularise her stay seven years later but no application was actually made. She had been apprehended by Immigration Officers in 2015 and made the application the refusal of which is the subject of this appeal in 2016. The appellant's evidence was that she lived with her brother and his wife and she had another brother, sister, nephews and nieces and their spouses in Britain.

3. In Nigeria she has a husband, from whom she is estranged and three children aged 26, 25 and 17 who all live together. Her 26 year old daughter works as a lawyer in a law firm, her 25 year old son is unemployed and her 17 year old had just gone to university. The appellant's evidence was that she had worked as a chef in a nursing home in Belfast but she was not currently working but was supported by her relations. She asserted that Nigeria was a dangerous country ravaged by terrorists and militant activities and that she would be unable to sustain herself there because Nigeria was very expensive and although her family here gave her £300 per month that would not be sufficient to support her.

4. The appellant's brother's evidence asserted that the appellant had been maltreated in an unhappy marriage in Nigeria and there would be nobody to support her there. It appears that one of her brothers travels to Nigeria quite often.

5. In paragraphs 32 onwards of the determination the judge set out his findings of fact and relevant law referring to Rule 278ADE(1)(vi) of the Rules and Section 117B of the Nationality, Immigration and Asylum Act. He concluded that the appellant could not meet the requirements of the Rules. He considered that in Nigeria she could still be economically active and could find work. He placed weight on the fact that she had overstayed and that she could never have had any expectation of being able to stay in the United Kingdom permanently: she had no leave to remain after her visit visa had expired. He stated that he had not taken into account representations regarding the threat of kidnap and terrorism in Nigeria but pointed out that this was not an asylum claim.

6. The grounds of appeal asserted firstly that the judge had not made a step by step consideration of the appellant's rights under Article 8 as set out in **Razgar [2004] 2 AC 368** and furthermore stated that the decision was not compatible with Article 8 as the judge had failed to apply Section 117B to the determination. The grounds asserted that the judge had not followed the approach laid down in his judgment in **Rhuppiah [2016] EWCA Civ 803** by Sales LJ who had stated that the starting point in consideration of the proper construction of part 5A of the 2002 Act was that Sections 117A – 117D, taken together, identified a structured approach to the application of Article 8 which produces in all cases a final result which is compatible with and not in violation of Article 8.

7. Before the hearing Ms Price had submitted a skeleton argument. It argued that the judge had not properly taken into account the appellant's private life here and that

he had not properly weighed up the public interest against that claimed private life. She argued that there were two important factors to be given weight in the balancing exercises, which were the ability of the applicant to speak English and to be financially independent so as not to be a burden on the public purse. She pointed that that argument had swayed Judge of the First-tier Tribunal Grant-Hutchinson when she granted permission to appeal. The grounds of appeal referred to ten certificates of higher and further education, a bundle showing the advanced level of the appellant's English sufficiency and she argued that these showed that the appellant would not be a burden on public funds because she would be able to obtain work here. Moreover, it was argued that there was evidence that there was civil unrest in Nigeria and she said that that should be taken into account. The judge had not properly considered whether or not there would be unjustifiably harsh circumstances for the appellant being removed to Nigeria. A number of cases were cited which referred to the discretion which should be used in Article 8 cases.

8. Ms Price stated that the judge had not properly exercised his judgment in considering the appellant's circumstances and moreover that there was in Nigeria the threat of kidnap – she referred to the government guidelines on travel to Nigeria which referred to violent crime there. Moreover, she pointed out the appellant's husband was estranged from her.

Discussion

9. I consider that there is no material error of law in the determination of the Immigration Judge. The judge was entitled to place weight on the fact that the appellant's private life had been built up at a time when she did not have leave to remain in Britain. The fact that the appellant speaks English and has certain qualifications are not factors which could weigh in favour of the appellant when assessing her rights under Article 8 of the ECHR. That is clear from the judgment in **Rhuppiah** to which the grounds of appeal referred. However, the relevant guidance is in paragraphs 59, 61, 62 and 63 of the judgment. There it is clearly stated that the ability to speak English and indeed to be financially self-sufficient or not requiring state assistance were at best neural factors in an Article 8 assessment.

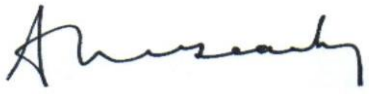
10. Moreover, although I accept that the background documentation refers to unrest in Nigeria or to levels of crime there, there is nothing to indicate that there would be a reasonable likelihood of this appellant suffering kidnap or being the victim of a crime in Nigeria. The reality is that she can return to Nigeria – a country which she left when she was aged 45 and where she was clearly well integrated and where she has three children who all live together. There is no indication that she could not be supported there, particularly if she has additional resources from her family here. It may well be that she is estranged from her husband but that does not mean that she cannot return. Indeed, the reality is that the various qualifications which she has obtained would stand her in good stead on return. There is simply nothing to indicate that it would be unreasonable or disproportionate to expect her to return to Nigeria.

11. Accordingly, I consider that there is no material error of law in the determination of the Immigration Judge and that his decision to dismiss this appeal shall stand.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed:  Date: 1 March 2019

Deputy Upper Tribunal Judge McGeachy