



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04965/2019**

THE IMMIGRATION ACTS

**Heard Remotely at Field House
On 3 March 2021**

**Decision & Reasons Promulgated
On 23 April 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

RAMOTA ADUKE OGUNWOMOJU
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Nwaekwu, Solicitor from Moorehouse Solicitors
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of the First-tier Tribunal dismissing the appeal of the appellant against a decision of the respondent on 14 February 2019 refusing her application for leave to remain on human rights grounds.
2. As well as Mr Howells' submissions I have the benefit of a detailed written submissions signed by Mr David Clarke, Senior Home Office Presenting Officer dated 2 September 2020.
3. This appeal concerns a concession being withdrawn but at paragraph 45 of the Decision and Reasons the First-tier Tribunal Judge said:

“Ultimately I do not consider any difficulties or obstacles that the appellant would face on return amount to being significant. The evidence as a whole, and having considered all the factors together, show that she cannot meet the very significant obstacles test as laid out in paragraph 276ADE(1)(vi) and the appeal by reference to the Rules must be similarly refused”.

4. This prompted Mr Howells to argue that the appeal had to be dismissed because there was no challenge to the finding that the appellant could be expected to re-establish herself in Nigeria. However, as I read the decision, the judge was concerned with the appellant returning as a single person, rather than a person in a relationship akin to marriage and the findings relating to “very significant obstacles” are necessarily linked to the finding that the Appellant is not in a relationship akin to marriage. It follows that I do not accept Mr Howells’ submission that the appeal *has* to be dismissed because not all relevant points have been challenged.
5. The appellant had entered the United Kingdom in July 2010 with entry clearance as a visitor. She remained in the United Kingdom without permission and without contacting the authorities until 17 July 2018 when she applied for leave to remain on the basis of her family life with her partner who is a British citizen. The respondent accepted, and formally conceded, that there was a genuine and subsisting relationship between the appellant and her partner but not that there were insurmountable obstacles or very significant difficulties in the way of her continuing her family life outside the United Kingdom.
6. After hearing the evidence the Presenting Officer in the First-tier Tribunal withdrew the concession that the appellant had established that she was in a genuine and subsisting relationship and the judge found that neither a genuine and subsisting relationship had been established nor that there were any insurmountable obstacles in the way of resuming any family life outside the United Kingdom.
7. This was a case where a clear and unequivocal concession was expressly withdrawn at the submission stage.
8. Although I have referred to the Presenting Officer withdrawing the concession that is a gloss on the process. It is, I find, trite law that any party who has conceded a matter of fact can ask to withdraw the concession at any time. The tribunal must then decide if it should allow the concession to be withdrawn having considered all relevant circumstances. If I may say so, the point was put pithily by Moses LJ in **CD (Jamaica) v SSHD** [2010] EWCA Civ 768 at paragraph 18 where he said:

“The real question that the tribunal had to determine was whether all the essential issues in the case could fairly be resolved by allowing the concession to be withdrawn or whether the prejudice was such, and the damage to the public interest such, that the Secretary of State should not be allowed to withdraw the concession.”
9. Withdrawing a concession will almost always raise questions of fairness. It may be right, for example, to permit the concession to be withdrawn but to adjourn for a party to deal with the point. The party withdrawing the

concession might have to pay costs. The Tribunal might find the consequences of withdrawing the concession to be unfair and not permit the concession to be withdrawn.

10. Here the concession was withdrawn because the Presenting Officer found that the evidence about the relationship had been so unsatisfactory that it was unrealistic to maintain the pretence that the parties were in a genuine and subsisting relationship.
11. It was plainly open to the appellant, who was legally represented, for example to complain about the concession being withdrawn and to ask for an adjournment or ask for the case to be decided on the basis of the evidence called bearing in mind that the appellant had not had an opportunity of calling further evidence to establish the relationship because he had no reason to see any need to do that. It seems that none of those things were done but the appellant's representative made submissions on the evidence. There is nothing that comes close to being unfair about the conduct of the hearing.
12. It does not follow from that that the decision was rational. There are elements of the reasoning which concern me a little. The judge's observations at paragraph 33 about the "manifest lack of evidence in support of a relationship which is said to have been ongoing for the past four years" should have been tempered expressly by an acknowledgment that it was not in dispute until late in the hearing that such a relationship existed. It follows that the absence of photographs, for example, really should not have been considered a significant point.
13. However the judge considered the oral evidence. The judge was concerned that the parties to the relationship describe themselves as married when they patently are not but was more concerned about gross inconsistencies in the evidence. The appellant described herself as the "carer" for her partner. This was not a chance remark. As the judge explained she referred to herself as the "wife and primary carer of my husband" but the evidence of Mr Bevan was that he did not have any care needs or require any attention or supervision from the appellant.
14. Extraordinarily Mr Bevan had adopted a witness statement described by the judge as "patently fabricated" and the grounds do not criticise that finding.
15. The judge accepted some relationship between Mr Bevan and the appellant. They had lived at the same address for some years and the appellant played some part in the lives of Mr Bevan's family members but the judge was entitled to conclude that sharing an address was not cohabitating or being in a genuine and subsisting relationship.
16. The judge was particularly concerned that Mr Bevan did not know the names of any of the appellant's children until he was able to recall one of the names; he did not know how often the appellant saw her own children or grandchildren which the judge saw as an indication that Mr Bevan and the appellant had separate personal lives and the judge found it "remarkable" that Mr Bevan thought the appellant had been a carer in

Nigeria, whereas she claimed to have been an Immigration Officer for over twenty years. Against this evidence the application to withdraw the concession by the Presenting Officer was plainly sensible and the judge's decision to reject the claim that there was a genuine and subsisting relationship on the evidence was entirely reasonable.

17. Although in his submissions to me Mr Nwaekwu referred to the wish to call further evidence, no evidence had been provided for me to consider. This is important. There was nothing to show that the alleged error complained of was material or that anything could have been done had the appellant been on notice that the claimed relationship was not accepted.
18. It is quite clear to me that there has been some misdirection in the part of the appellant's representatives. Much was made of the underlying principle that a person who alleges must prove but the appellant has rather lost sight of the fact that it is she who is alleging something; she alleges that she complies with the Immigration Rules and/or is entitled to remain on human rights grounds and she must prove her case. It is completely irrelevant that in applications under the EEA Rules it has been shown that the Secretary of State must prove her assertion that a marriage is a marriage of convenience. This appeal does not concern a marriage of convenience. It is said to be a sham arrangement that has been described wrongly. It is clear beyond all possible argument that the onus is on the appellant to establish her case and any suggestion to the contrary is misconceived.
19. Mr Nwaekwu purported to rely on the decision of this Tribunal in **Naz (subsisting marriage - standard of proof) Pakistan [2012] UKUT 40 (IAC)** but I find that submission must be based on a misreading of the case which makes it plain that it is for the claimant to establish the requirements of the Immigration Rules are met or that an immigration decision would cause an interference with established family life.
20. In short the judge's findings were plainly permissible on the evidence. The potential for unfairness that arises from the withdrawal of a concession was not fulfilled here. There was no application at the time for an adjournment, there is no additional evidence before me to indicate how things could have been done differently and the finding that there is not a subsisting and genuine relationship is wholly in keeping with the appellant's alleged partner's apparent ignorance of her life and circumstances which ignorance was not the result of not having notice of the questions but of not knowing much about the person with whom he lives.
21. Putting these things together I am satisfied there is no material error and I dismiss the appeal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 13 April 2021

