Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/35955/2014
IA/35956/2014
IA/35968/2014
IA/35969/2014

THE IMMIGRATION ACTS

Heard at Field House
On 7th April 2015

Decision & Reasons Promulgated
On 5th May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MRS BLESSING IMOTONGHA PEREZ (FIRST APPELLANT)
MASTER OYINEDUBIBOWEI FORWARD-EVER PEREZ (SECOND APPELLANT)
MISS OYINDA PRECIOUS PEREZ (THIRD APPELLANT)
MASTER OYINBUNUGHAN FERDNARD (FOURTH APPELLANT)
(NO ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: First Appellant in person
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The First Appellant is a citizen of Nigeria born on 3rd March 1982. The Second to Fourth Appellants are her three minor children. The appeals of the Second to Fourth Appellants rise and fall on that of the First Appellant. For the purpose of these proceedings all references herein are to the First Appellant unless specified to the contrary.

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2. The Appellants all sought entry to the United Kingdom as visitors for six months in order to visit Mr Perez Omoun Perekebena who is the husband of the First Appellant and the father of the Second, Third and Fourth Appellants. Visit visas were granted in Abuja which granted leave to enter the United Kingdom on 11th August 2014 with leave to remain until 11th February 2015. The Appellants arrived in the UK on flight VS652 from Lagos, Nigeria and presented themselves on the primary checkpoint producing valid Nigerian passports. Appellant 1 confirmed to the Immigration Control Officer that she and her children would be returning to Nigeria on 11th February 2015 but was unable to produce any return tickets as evidence of this. When questioned about the schooling of her children the First Appellant replied that she and her husband wanted the children to attend school whilst in the United Kingdom. The Immigration Officer was not satisfied that the Appellants qualified for entry to the United Kingdom as visitors and issued them with forms IS81 submitting them all to further examination.

3. In accordance with local procedure a search of the Appellants' baggage was conducted and during the course of the baggage search the Appellant was found to be in possession of numerous documents which are set out in detail in form IS.125. As a result the Appellants were detained and refused entry to the United Kingdom.

4. The Appellants appealed and the appeal came before Judge of the First-tier Tribunal P J M Hollingworth at the Nottingham Justice Centre on 20th November 2014. In a determination promulgated on 15th December 2014 the Appellants 'appeals were allowed. I note however that at that hearing whilst the Appellants were legally represented the Secretary of State was not.

5. The Secretary of State on 15th December 2014 lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended:-

   (a) that there was a material misdirection in law in that the First-tier Tribunal Judge appeared to have proceeded on the basis that in the absence of cross-examination the credibility of the Appellant and her Sponsor husband had to be accepted.

   (b) that the First-tier Tribunal Judge had failed to resolve conflicts of fact or opinion on the material matter in particular that the Appellants had stated on their visit visa applications they would be staying for just three weeks and on arrival the First Appellant stated they would be staying for six months and that the Second to Fourth Appellants would be put into state schools for the duration of the visit. It was contended that the change in length of stay and the intention to put the children into the state education system was contrary to the conditions of their visas and were central issues in the reasoning which led to the Immigration Officer concluding that there had been such a change of circumstances since the entry clearance was granted that leave of entry should be cancelled; and

(c) that the judge had failed to give adequate and rational reasonings for finding on a material matter notably that the undisputed fact that the Appellant had applied for and been given a place on a twelve month MSc course commencing shortly after her arrival on a purported three week holiday and had also asked her employers for associated study leave did not amount to a basis to find that there had been a change of circumstances.

6. On 2nd February 2015 First-tier Tribunal Judge Shimmin found that the grounds had substance and it was arguable they disclosed a material error of law. It is on that basis that the appeal comes before me. The Appellant appears in person. She indicates that she while she had previous legal representation she did not have it for the purpose of this appeal. She spoke English and I explained fully the process to her and she indicated that she understood the process that was before her. She further made it clear that she wished to return to Nigeria with her children but was unable to do so until she was in receipt of my determination whatever the outcome may be because all Appellants' passports had been detained by the Home Office pending the outcome of the appeal. The Respondent appeared by her Home Office Presenting Officer Mr Jarvis. Whilst acknowledging that this is an appeal by the Secretary of State for the purpose of continuity throughout the legal proceedings Mrs Perez is referred to herein as the Appellant and the Secretary of State is the Respondent.

Submissions/Discussion

7. As a starting point Mr Jarvis seeks reliance upon the authorities of *K v The Secretary of State for the Home Department (Côte d'Ivoire) [2004] UKIAT 00061* and *VH (Malawi) v The Secretary of State for the Home Department [2009] EWCA Civ 645*. In making reliance upon those decisions I accept that some of the findings of the Immigration Judge were made in the absence of direct cross-examination. He accepts that it is better for a Home Office Presenting Officer to have been present but submits that the judge has abandoned the appropriate fact-finding process and has taken the wrong approach to cases where there is no Home Office Presenting Officer. He relies on the extract from *K* recited at paragraph 24 of *VH* where the Court of Appeal had stated concerning the questioning of witnesses by a judge on points of inconsistency and other matters of concern "what is important, however, in relation to those matters is that the Adjudicator should not develop a different case from that being presented by the other party or pursue his or her own theory of the case." He submits that this is exactly what has happened in this instance.

8. Mr Jarvis submits that the judge has side-stepped the evidence and that there were documents relating to the First Appellant staying for six months and evidence to show that the First Appellant intended to attend a course at the University of Buckingham. He submits that there was enough evidence for the judge to have engaged with and that the judge has imposed far too high a burden of proof in his analysis. He submits that there is a material error of law and he asks me to set aside the decision and to re-make the decision dismissing the appeal of the Appellant.

9. I invited Mrs Perez as to whether she wished to make any comments or submissions. She merely reiterates that it was her intention to come for a three week visit and that it was not her intention to put the children into school. She seeks to make no further comments than that but does reiterate that it is her wish to be able to return home now with the children.

The Law

10. 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.

11. 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

12. It is never easy for an Immigration Judge when there is not a Home Office Presenting Officer there to put their case particularly when they are faced by a legal representative. However in this instance I am satisfied that the approach of the judge in treating the Appellants' evidence as uncontroverted leads to the conclusion that the judge may well have proceeded on the basis that in the absence of cross-examination the Appellants' credibility should be accepted. That is in contradiction to the correct approach particularly that set down in *VJ (Malawi)*. Further the judge has failed to resolve the conflicts in his determination of two material matters in particular namely conflict between the length of visit stipulated as three weeks and latterly six months and the version of events and explanations given by the Appellant and secondly has failed to give adequate and rational reasons for findings namely in respect of the outcome of the bag search which strongly indicated the intention of the Appellant was not declared to the Entry Clearance Officer. The fact-finding exercise has not therefore been properly carried out. In all circumstances I

find there is a material error of law and I set aside the decision of the First-tier Tribunal.

Re-Making/Re-Hearing the Evidence

13. Once again the First Appellant emphasises that the length of her proposed visit was three weeks and that it was not her intention to put the children into school. I am however referred at some length by Mr Jarvis to the refusal/cancellation of leave to enter/remain report of the Home Office. In particular he refers me to the appendices attached and the verbatim transcript of the interview with Mr Perekebena to be found at Appendix 6. He points out that the salient points of the interview are that Mr Perekebena stated his family would be visiting for three weeks and he had completed his wife's application on her behalf.

14. When asked about the fact that he had previously mentioned his family would be staying for six months and that he was now stating they would be staying for only three weeks his response was that he had not known to whom he was talking and thought it was the taxi driver calling. Mr Jarvis quite understandably suggests that such an approach casts considerable doubt on the credibility of Mr Perekebena's testimony.

15. Mr Jarvis further submits that the Immigration Officer was entitled to raise all discrepancies due to the change of circumstances and takes me to the documentary evidence found in the Appellant's baggage submitting that that clearly demonstrates an intention by the First Appellant to study whilst in the United Kingdom and for the Second to Fourth Appellants to attend school which would breach the conditions attached to their visas. He submits that these documents cast even further doubt on the credibility of the testimony both of the First Appellant and of the Appellant's husband.

16. I specifically raised the issue of a letter from the chairman of the local government service commission Yenagoa. The First Appellant confirmed that she was the author of this letter and it had her signature upon it. That letter states and I quote verbatim, "Having been offered admission to read MSc in Psychology, University of Buckingham, UK I humbly wish to apply for study with pay with effect from 1st September 2014." I specifically enquired of the First Appellant as how she reconciled that letter with her intention to undertake a three week visit. She was evasive in her response but merely replied in the end that she did not come here to study.

17. Mr Jarvis asked me to find that there is no reasonable explanation for the documents in the First Appellant's luggage unless it was her intention to remain here for a substantial period of time and to undertake a course at Buckingham University. He submits that the Immigration Officer was justified in carrying out the search and in finding inconsistencies in the evidence between the First Appellant and her husband. He asked me to re-make the decision dismissing the Appellant's appeal.

18. I invited the First Appellant as she was a litigant in person as to whether there was anything further she wished to say and that I would listen without interruption to it. She replied that she did not.

Findings on the Re-Hearing

19. There is considerable evidence in the documents produced to which no reasonable or consistent answer has been given firstly that it was the intention of the First Appellant to attend a course at the University of Buckingham and secondly that in attending that course it would inevitably be that she would be requiring her three children to attend school in the UK. Further she does not challenge the comment directly made by her husband (who does not attend this appeal) that when making comments originally about the length of stay of his wife's visit he thought he was talking to a taxi driver. Documentary evidence produced and the inconsistencies of the Appellant's testimony as against that of her original application cast considerable doubt on her version of events and of her intentions and her family's intentions as to the length of time they intended to remain in the UK. In such circumstances I am satisfied that the Immigration Authorities were perfectly entitled to detain the Appellants at the point of entry and to make findings of fact that there was such a change of circumstances in their case since leave was granted that their leave should be cancelled. Consequently the appeal of the Secretary of State is upheld.

20. It is worth recalling that of course the only reason that this matter has come back before me is because the Appellant seeks to leave the UK without a stain on her visa record. For the reasons given above that clearly will not happen. It is ironic that for several months now it has been the wish of the First Appellant to return to Nigeria along with her children. She cannot do so until the conclusion of this appeal and thereafter the return of her and the children's passports. I trust that once the Home Office are in receipt of a copy of this determination it will be possible for arrangements to be made for the First Appellant and her children to promptly leave the United Kingdom. The Appellant has indicated that that is her wish but no doubt it will be the wish of the Secretary of State to be present and to ensure that that takes place.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law. I set aside that decision and re-make the decision for the re-hearing of this matter dismissing the appeal of the First to Fourth Appellants (it being noted that the appeals of the Second to Fourth Appellants rise and fall on that of the First Appellant) and that the decision of the Home Office cancelling the Appellants' entry clearance is confirmed.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date

Deputy Upper Tribunal Judge D N Harris