



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

Appeal Number: IA373882014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 May 2016**

**Decision & Reasons  
Promulgated  
On 25 May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**MS DAMILOLA MERCY RASAQ  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. J. Dhanji of Counsel, instructed by SLA Solicitors  
For the Respondent: Ms A Brocklesby-Weller, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. By way of a decision promulgated on 4 December 2015, the decision of the First-tier Tribunal promulgated on 24 April 2015 was set aside to be remade. The appeal in respect of the Appellant's son, Alexander Rasaq, was allowed under the immigration rules, paragraph 276ADE(1)(v).

2. At the resumed hearing I heard oral evidence from the Appellant and from her son, Alexander Rasaq. They both adopted their witness statements dated 28 April 2016. Alexander also provided a letter dated 26 April 2016. Both representatives made oral submissions. I reserved my decision which I set out below with my reasons.
3. It was accepted at the error of law hearing that the Appellant could not meet the requirements of the immigration rules. Consequently the appeal before me was in respect of Article 8 outside the immigration rules.

#### Credibility

4. I found both the Appellant and Alexander to be honest and credible witnesses who answered the questions put to them and were not evasive. Their evidence was consistent. I find that their evidence can be relied on.

#### Article 8 outside the immigration rules

5. I have considered the Appellant's appeal under Article 8 outside of the immigration rules in accordance with the steps set out in Razgar [2004] UKHL 27. Alexander's appeal was allowed on the basis that he met the requirements of paragraph 276ADE(1)(v), as he is aged 18 years or above and under 25 years, and has spent at least half of his life living continuously in the United Kingdom.
6. At paragraph [54] of the First-tier Tribunal decision the judge found that there was family life between the Appellant and Alexander. Ms Brocklesby Weller referred to this finding and did not submit that family life for the purposes of Article 8 did not exist between the Appellant and Alexander. I find that, although Alexander is now 18 years old and therefore an adult, he has a family life with his mother for the purposes of Article 8. I find that he is the Appellant's only child and has been living in the United Kingdom with her for almost 12 years. I find that the family unit consists of the Appellant and Alexander. He has no contact with his father. I find that there is an extremely strong dependency between the Appellant and Alexander. I find that he is part of a family unit which consists of him and the Appellant, and that he has not formed his own independent family unit outside of this. I find that the Appellant and Alexander have a family life for the purposes of Article 8.
7. Continuing the steps set out in Razgar, I find that the proposed interference would be in accordance with the law, as being a regular immigration decision taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the

individual, unless the level of interference is very significant. I find that in this case, the level of interference would be significant and that it would not be proportionate.

8. In carrying out the proportionality assessment, I have taken into account the factors set out in section 117B of the 2002 Act insofar as they are relevant. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. The Appellant speaks English (section 117B(2)). I find that she is dependent financially on her cousin, friends, and members of her church (section 117B(3)). Sections 117B(4) and (5) are not relevant to family life.
9. Section 117B(6) is not relevant as Alexander is now an adult. However it was submitted by Mr. Dhanji that, had there not been an error of law in the original decision promulgated in April 2015, Alexander's appeal should have been allowed under paragraph 276ADE(1)(iv), and therefore the Appellant's appeal should have been allowed under Article 8 outside the immigration rules with reference to section 117B(6). He submitted that this was a relevant factor to be taken into account in carrying out the proportionality exercise. I find that the judge in the First-tier Tribunal found that it would not be unreasonable for Alexander to leave the United Kingdom after he had completed his A-levels. Therefore logically the judge found that it would have been unreasonable for him to leave before his A-levels, and the hearing was before he had taken his A-levels. I therefore find that, had the judge considered the circumstances as at the date of the hearing, the Appellant's appeal would have been allowed outside the immigration rules by reference to section 117B(6).
10. I find that in carrying out the proportionality assessment I must take into account both the rights of the Appellant to a family life, and the rights of Alexander. I have carefully considered Alexander's letter where he sets out in his own words the strength of the bond that he has with his mother. He states that there is nobody else to whom he can turn. The Appellant is the only family that he has and he is extremely close to her. He states that he needs her for emotional support. He states that she is the most important and essential person in his life and he would be devastated if she had to leave the United Kingdom. I have found above that I can rely on Alexander's evidence and I find that, although he is technically an adult, given his circumstances, he has a very strong relationship with his mother and a very strong dependency which it is not in his interests to have broken by removing the Appellant to Nigeria.
11. I find that the Appellant lives with Alexander in one room in a rented property. I find that Alexander has been in full-time education, completing his A levels in July 2015. I find that Alexander has offers from Portsmouth and Kent universities but he has not been able to take up these offers owing to his immigration status. I find that he does not work as he is not able to do so and that he depends on his mother financially. I find this is not a case where Alexander is a young adult with an independent life

where he support himself financially, but I find that he has been in full-time education and intends to continue with his education. I find that Alexander intends to study at Kent University in order that he can live at home with the Appellant while doing so, and thereby continue to receive strong support from her.

12. I find that Alexander is unable to access a subsistence loan for his university studies although he is able to access a tuition loan. I find that if the Appellant is forced to leave the United Kingdom, Alexander will have to set up home alone and support himself financially at the same time as starting university, without the support of his mother, the adult who has been the main source of support during his life. Although Alexander and the Appellant are currently supported financially by the church and by his uncle, were the Appellant to leave the United Kingdom, I find that Alexander would not be able to rely on the church to provide him with accommodation and finances for his university course. I find that he would not be able to move in with his uncle who has five children of his own.
13. While of course Alexander will learn life skills over time, and while it is during early adulthood that these skills will be learned, I find that it would be disproportionate to expect Alexander to set up home on his own at this stage, given the strength of the bonds between Alexander and the Appellant, and given the reliance which he places on her, which has not vanished simply because he has turned 18.
14. It was submitted by Ms Brocklesby Weller that it would be a choice for Alexander to remain here rather than return to Nigeria with his mother. However I find that the immigration rules set out the Respondent's position on where the public interest in maintaining immigration control is outweighed by the private life of an individual. I find that the Respondent considers that, as Alexander meets the requirements of the immigration rules, respect for his private life therefore outweighs the public interest in maintaining effective immigration control. I therefore find that it is not a choice for Alexander to return to Nigeria as he is entitled to remain in the United Kingdom.
15. I have taken into account that the Appellant has not had leave to remain in the United Kingdom, but taking into account the fact that the Appellant is a single mother to Alexander, the fact that Alexander has a right to remain in the United Kingdom under the immigration rules, and the fact that the Appellant's relationship with Alexander is extremely strong, much closer than would usually be the case owing to their circumstances, I find that the balance comes down in favour of the family life between Alexander and the Appellant and that their interests outweigh the public interest in maintaining effective immigration control.

16. I find that the Appellant has shown on the balance of probabilities, at the date of the hearing, that the decision is a breach of her rights, and those of Alexander, to a family life under Article 8 ECHR.

Decision

17. The appeal is allowed on human rights grounds, Article 8.

No anonymity direction is made.

Signed

Date 24 May 2016

Deputy Upper Tribunal Judge Chamberlain