Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/34841/2015
IA/34842/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24 January 2018	**On 26 January 2018**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

JN
CU
(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellants: Ms N Nnamani, Counsel, instructed by Samuel Louis Solicitors
For the respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. These are appeals against the decision of Judge of the First-tier Tribunal O'Brien (the judge), promulgated on 23 March 2017, in which he dismissed the appellants' appeals against the respondent's decision dated 19 June 2015 refusing their human rights applications.

Factual Background

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2. The appellants are nationals of Nigeria. The 1st appellant was born on [ ] 1980, and the 2nd appellant, who is the daughter of the 1st appellant, was born in the UK on [ ] 2008. The father of the 2nd appellant is a Nigerian national but has no continuing relationship with either appellant. At the date of the judge's decision the 2nd appellant was 9 years old.

3. The 1st appellant claimed to have entered the UK in January 2004. On 31 March 2011, the appellants made their human rights claim. The respondent considered the application under the immigration rules giving effect to private life considerations (paragraph 276ADE and Appendix FM), and then outside the immigration rules in line with article 8. The respondent was not satisfied that the appellants met the requirements of paragraph 276ADE or Appendix FM, and was not satisfied there were any compelling circumstances sufficient to warrant a grant of leave on article 8 grounds.

The decision of the First-tier Tribunal

4. The appeal was heard on 3 March 17. The judge considered a number of documents including a witness statement from the 1st appellant and an NHS letter and school documents, including school reports, in respect of the 2nd appellant. The judge summarised the 1st appellant's oral evidence. In addition to a description of the circumstances in which the 1st appellant came to enter the UK and the conditions in which she lived before and after entering, the 1st appellant stated that she spoke Ibo, that the 2nd appellant did not want to learn that language, and that the 1st appellant had shared with the 2nd appellant some of her Nigerian culture. The judge noted that the 2nd appellant had flat feet and bilateral hallux Valgus (bunions on both feet) but no learning difficulties.

5. The judge set out the requirements of paragraph 276ADE and of E-LTRPT and EX.1. of Appendix FM. The judge additionally set out the 5-stage test for assessing article 8 claims as established in *Razgar* [2004] UKHL 27. The judge referred to the public interest factors detailed in s.117B of the Nationality, Immigration and Asylum Act 2002 and case law considering those provisions. The judge additionally directed himself in respect of the duties to safeguard and promote the welfare of children in the UK pursuant to s.55 of the Borders, Citizenship and Immigration Act 2009. The judge directed himself in accordance with authorities dealing with the best interests of children and the relevance of a child having resided in the UK for at least 7 years (*EV (Philippines) & Ors v Secretary of State for the Home Department* [2014] EWCA Civ 874 and *MA (Pakistan) & Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor* [2016] EWCA Civ 705.

6. In paragraphs 50 to 53 the judge rejected the 1st appellant's claim to have been seriously mistreated while in Nigeria and to have been trafficked to the UK. The judge supported his conclusion by reference to inconsistencies in the 1st appellant's evidence, and found, in any event, that it would be reasonable for the appellants to relocate in Nigeria to avoid any ill-treatment.

7. The judge then considered the position of the 2nd appellant. At paragraph 55 the judge stated,

> "... turning, thus, to the question of whether it would be reasonable to expect the Second Appellant to leave the United Kingdom, I recognise that she has lived in this country since birth, and will soon celebrate her 9th birthday. It is clear also that the Second Appellant is doing well at school. However, she is not presently at a critical stage of her education. The Second Appellant would be able to continue her education in Nigeria, at state expense until aged 15. Whilst she would suffer some disruption to her private life, the Second Appellant would be moving together with her mother, from whom she has already been exposed to her cultural and linguistic heritage. She has never had any contact with her father. There was no evidence that the Second Appellant's medical conditions could not adequately be treated in Nigeria."

8. And at paragraph 56 the judge stated,

> "All in all, I am satisfied that the Second Appellant's removal with her mother to Nigeria would not be contrary to her best interests nor would it be unreasonable."

9. The judge then noted, at paragraph 57, the public interest in maintaining effective immigration control, that the appellants were not financially independent, and that the 2nd appellant had benefited from state healthcare and education. Having found that the appellants' removal would breach their respective private life rights, the judge then concluded that their removal would be proportionate noting that their private lives had been established when they were in the UK unlawfully and that the 2nd appellant, who had lived in the UK for more than 7 continuous years, would be returning to the country of her cultural heritage with the only parent she has known and was still relatively young and adaptable.

The grounds of appeal and the error of law hearing

10. The grounds of appeal content that the judge's adverse credibility findings in respect of the 1st appellant were not adequately reasoned and that his conclusion that the appellants would be able to avail themselves of continued support from the church was unreasonable and perverse and not supported by any evidence. The grounds further contend that the 2nd appellant was at a critical stage of her emotional development and that there was no evidence to support the judge's

conclusion that she would be able to continue her education in Nigeria. The grounds finally contend that the judge misapplied *SSHD v SS (Congo) & Ors* [2015] EWCA Civ 387, but fail to identify what "patently compelling circumstances" merited consideration outside of the immigration rules.

11. Judge of the First-tier Tribunal P J M Hollingworth granted permission to appeal on the basis that the judge arguably failed to undertake a sufficient analysis of the degree of the 2nd appellant's integration, that the judge arguably fell into legal error by concluding that the 2nd appellant was not at a critical stage of her education, that the judge failed to set out a sufficient analysis in considering the degree of integration across the social and cultural part of the spectrum in contradistinction to that to which the 2nd appellant would go, and that the judge should have set out an analysis of the 2nd appellant's best interests before reaching a conclusion on reasonableness.

12. Ms Nnamani expanded upon the grounds and the grant of permission. She focused on 2 main errors of law. Firstly, the judge failed consider the best interests of the 2nd appellant before concluding that it would be reasonable for her to leave the UK. There were said to be a failure to consider the best interests of the child in terms of her social and cultural integration into the UK community. Secondly, the judge accorded insufficient weight to the length of the 2nd appellant's residence in the UK. There were said to be no indication that the judge took into account the fact that the 2nd appellant was born in the UK and would have spent the formative years of her life here.

Discussion

13. I find, for the following reasons, that the decision does not contain any material legal error.

14. The grounds of appeal contended that the judge failed to provide any clear reasons for his adverse credibility findings in paragraphs 50 to 53. I find this ground is wholly meritless. At paragraphs 50 to 53 the judge gave legally sustainable reasons for finding the 1st appellant's account of her circumstances in Nigeria and her journey to the UK to be incredible. The judge noted inconsistencies relating to the circumstances surrounding the death of the 1st appellant's parents, an inconsistency in respect of the length of time that she allegedly lived with a friend following her escape from Ms Okafor, and the fact that in her witness statement she claimed to have strong family ties in the UK including and aunt, uncle and cousins, but indicated at the hearing that she in fact had no family members in the UK other than her daughter. The judge was unarguably entitled to hold these factors against the 1st appellant and to reject her account of having been trafficked into the UK.

15. The grounds additionally contend that the judge was not entitled to find it unlikely that financial support received by the appellants over a period of 8 years from her church would stop if they were returned to Nigeria. The judge noted the absence of any evidence from any church elder in support of this aspect of the appellants' claim. It is for the appellants to prove their case and the judge was fully entitled to note the absence of any evidence that financial support would not continue if they were removed to Nigeria. Such evidence could reasonably be expected to be provided. The judge was unarguably entitled to reject the appellants' claim that financial support would not continue.

16. There is no merit in the submission that the judge was not entitled to conclude that the 2nd appellant had not reached a critical stage of her education. At the date of the decision the 2nd appellant was 8 years of age and in year 5 of primary school. The judge demonstrably had regard to the school reports which indicated that the 2nd appellant was doing well at school (see paragraph 55), but there was simply no evidence that the 2nd appellant had reached what on any reasonable view could be regarded as a critical stage of her education (contrary to Ms Nnamani's submission relating to the 11 Plus exams, there was no evidence that the 2nd appellant was planning to sit any such exams). The FtJ was entitled to conclude that the 2nd appellant would be able to continue her education in Nigeria until the age of 15 as evidence for the proposition was contained in the Reasons For Refusal Letter.

17. I accept that the judge should have identified the 2nd appellant's best interests pursuant to s.55 of the Borders, Citizenship and Immigration Act 2009 before assessing whether it was reasonable to expect her to relocate to Nigeria (*Kaur (children's best interests / public interest interface)* [2017] UKUT 00014 (IAC)). I am not however satisfied that this error is in any way material on the particular facts of this case. There was very limited evidence of the nature and degree of the 2nd appellant's integration into the UK. The appellants' main bundle only contained a statement from the 1st appellant, a copy of the 2nd appellant's birth certificate and an NHS letter relating to an appointment at a children's hospital to see a specialist physiotherapist. The 1st appellant's statement asserted that the 2nd appellant was not familiar with the socio-cultural norms of Nigeria, but this appears to have been undermined somewhat by her oral evidence that she had shared some of her Nigerian culture with the 2nd appellant. The statement maintained that the 2nd appellant was making progress at school and it would not be in her best interests to arrest her development. The statement also asserted that the 2nd appellant was wholly integrated into British society and could not be expected to readily adapt to a foreign society. A supplementary bundle contained a further NHS letter, dated 18 January 2017, diagnosing the 2nd appellant with the bilateral marked hallux valgus

and flat feet, and several school reports in addition to certificates and awards received by the 2nd appellant. There was no impartial or independent evidence in respect of the degree of the 2nd appellant's integration into UK society or the impact upon her of having to relocate with her mother to Nigeria. In his assessment at paragraph 55 the judge took account of all relevant considerations relating to the 2nd appellant's best interests including her age, her length of residence in the UK, the stage of her education, her exposure to her cultural and linguistic heritage, and her medical conditions (*EV (Philippines) & Ors v Secretary of State for the Home Department* [2014] EWCA Civ 874 (at [35])). He conducted his assessment on the limited evidence presented by the appellants in respect of the degree of the 2nd appellant's integration. The judge was unarguably aware that the 2nd appellant was born in the UK and would soon be celebrating her 9th birthday. Although the judge's consideration at paragraph 55 was stated to be in respect of the reasonableness of expecting the 2nd appellant to leave the UK, all relevant factors in determining her best interests were nevertheless considered. In any event, it is apparent from paragraph 56 that the judge did consider that the 2nd appellant's best interests were to remain with her mother even if it meant that the family unit was removed to Nigeria. This conclusion is entirely consistent with *Azimi-Moayed and others (decisions affecting children; onward appeals)* [2013] UKUT 00197.

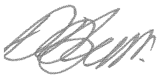
18. Nor is it arguable that the judge failed to consider or apply the principles established in the Court of Appeal decision in *MA (Pakistan*. The judge was clearly aware of this authority and was aware that, as a starting point, leaves should be granted to a child who has lived in the UK for at least 7 continuous years unless there were powerful reasons to the contrary (paragraph 45). The judge did identify powerful public interest factors in paragraph 57 and took into account the 2nd appellant's relatively young age and adaptability and the best interests considerations in paragraph 55. The judge's decision was one that he was rationally entitled to reach for the reasons given.

Notice of Decision

The First-tier Tribunal's decision did not contain a material error of law. The appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants in this appeal are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed

24 January 2018
Date

Upper Tribunal Judge Blum