Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/12978/2018
HU/12997/2018
HU/13000/2018

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 1st July 2019	**On 19th July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

JIT
D-MOT
OOT
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Hashmi of Counsel instructed by Kingswell Watts Solicitors
For the Respondent: Mr Diwnycz, HOPO

DECISION AND REASONS

1. These are the appellants' appeals against the decision of Judge Smith made following a hearing at Bradford on 14th January 2019.

Background

2. The first appellant is a citizen of Nigeria born on 15th May 1981 and the second two appellants are her children. The third appellant, who was born on 22nd August 2010, is a qualifying child.

3. The first appellant entered the UK as a visitor in June 2008 and overstayed. Her children were born in the UK. On 11th January 2018 they made applications for leave to remain in the UK on the basis of their private life which were refused on 30th May 2018 and it was their refusal which was the subject of the appeal before the Immigration Judge.

4. The judge, in a lengthy and detailed determination, recited the evidence both from the first appellant and her former partner Mr T who is the father of the children. He gave evidence that he had been giving her £500 per month by way of maintenance for the children which he paid in cash. There was no documentary evidence and the judge did not find it credible that some form of record would not have been kept of such substantial payments.

5. It was also Mr T's evidence that he saw the children twice a week on Thursdays and Saturdays. The judge observed that there was no evidence that he bought them Christmas or birthday presents or cards passing between him and the children or evidence from the children's school confirming that he picked them up or that he had any involvement in the children's education. The judge did not accept that the second and third appellants had contact with their half-brother, their father's son from his present relationship.

6. At paragraph 91 he wrote

> "I find that the first appellant has a genuine and subsisting relationship with the children. Mr T, for the reasons already given, does not. If I am wrong on this point and it is found that he does have regular contact and a genuine and subsisting relationship with the children then I find that he could not realistically accompany the first, second and third appellants because his relationship with the first appellant has broken down. He also has another child from another relationship who remains in the UK. I further find that contact by means of electronic means between Mr T and the second and third appellants whilst having some value is not as beneficial to children as regular personal contact."

7. The judge concluded that he would not have found it reasonable for the children to relocate with the first appellant if they had a parental relationship with their father but that was not his finding of fact.

8. At paragraph 115 the judge said

> "Thus, the decision is finely weighted. On the one hand O is a qualifying child, has never been to Nigeria and will be taken away from the home he is used to and his schoolfriends. Balanced against that he is young and will quickly make friends. There are no language impediments. He is a Nigerian boy who is

> entitled to be brought up in accordance with his country's values and customs. Whilst it could have been argued that there will be uncertainty for O in terms of accommodation his position is uncertain at the moment due to the first appellant's precarious financial position. The requirement for a child to go to another country is not necessarily unreasonable but is fact-specific. Many children go to other countries for a variety of reasons such as a parent's job. Requiring the children to go to Nigeria is not punishment for the first appellant's immigration status."

9. On that basis he dismissed the appeal.

The Grounds of Application

10. The appellants sought permission to appeal on the grounds that the judge had taken into account irrelevant matters when reaching his adverse credibility findings, namely whether the first appellant was telling the truth in relation to her employment and whether Mr T was telling the truth in relation to paying her maintenance. He attached too much weight to insignificant matters since it was not uncommon for those living in the UK illegally to play down their employment and this should not have had any bearing on whether contact was actually taking place or not. There was no need for detailed evidence in relation to maintenance to have been submitted as the issue was not maintenance but contact.

11. Permission to appeal was initially refused by First-tier Immigration Judge Blundell on 8th March 2019 but granted by Deputy Upper Tribunal Judge Black on 22nd May 2019.

Submissions

12. Ms Hashmi relied on her grounds and submitted that the judge had conflated the issues of maintenance, contact and employment in an impermissible way.

13. She said that the issue of contact had not been raised in the reasons for refusal letter and therefore the solicitors would not have been on notice that documentary evidence ought to have been provided. The reasons for refusal letter did not refer to the issue of whether the minor appellants had contact with their father. The first appellant had done all that was required of her in the application form, stating that her ex-partner paid her accommodation costs and gave her money for the children as and when needed. She had named him as the father at all relevant points on the form and had provided evidence of his passport and residence card. Had further evidence been requested it could have been provided but the solicitor was simply not aware that it would be such a significant issue.

14. She took me through the determination in some detail submitting that the children should not be blamed for any shortcomings in the mother's conduct and that, whilst the judge had said that he had taken account of their best interests, it was not properly reflected in the determination. They belonged to the UK having been born

here, spoke English and had not been financially dependent on the state. Their father had attended court to give evidence on their behalf.

15. Mr Diwnycz defended the determination submitting that it was the appellant's responsibility to put forward her case in her application form and she had not disclosed at that stage any evidence of contact between her children and their father. When asked to give details of his parental responsibility (for example any contact or financial support) she had written "financial." Further, when given the opportunity to give details of when he had last had contact with the child and the nature of their relationship, the box had been left blank.

Findings and Conclusions

16. I am not persuaded that there is an error of law in this determination.

17. First, it was not an error for the judge to highlight that the first appellant gave discrepant evidence to the Tribunal about whether she had worked. She initially said that she had not worked and then was asked whether she had ever received any state benefits. She answered in the negative to both questions. When it was put to her how she could have survived she admitted that she worked as an Avon representative and also plaiting hair. He noted that in O's birth certificate the first appellant gave her occupation as dispatch operative – card manufacturers.

18. The fact that the first appellant was not honest in relation to her employment was a relevant matter in assessing whether she had given credible evidence in relation to her children.

19. So far as maintenance is concerned, her oral evidence was inconsistent with the evidence in the application form. In the form she said that she received income as and when needed and the amount was not fixed. The evidence before the judge was that she had been getting £500 a month for two years and two months but there was no documentary evidence in support. It was open to the judge to disbelieve the appellant's case that the children's father supported her financially. This was clearly relevant in deciding the level of contact which he enjoyed with his children.

20. The oral evidence was that he had a great deal of contact, namely three hours each Thursday and seven hours each Saturday. However there was no evidence in the form of cards or receipts for presents or from the children's school. Ms Hashmi submitted that it was not the appellant's evidence that Mr T collected the children from school but it was his evidence that he saw them from 3:15 which implies to me that this is exactly what she was saying.

21. So far as her argument that the solicitors were not on notice that this was an important issue is concerned it is quite obvious, if the appellants could establish a genuine relationship with their father who is in the UK, that would be a very powerful argument in favour of their being able to remain here. It would be quite

extraordinary if the appellant's legal representatives did not advise her that such evidence would be crucial.

22. Ms Hashmi's argument submitted that they were not on notice because the issue was not raised in the reasons for refusal letter but I have to say that the problem here is that the appellant herself did not give any indication at all in the application form that her children were in regular contact with their father. The clear implication from the form is that there was no such contact.

23. The weight which the judge attached to the evidence was entirely a matter for him. There is no error in his approach. The judge examined the children's position and took into account their best interests as a primary consideration. They would be returning to their country of nationality, with no language impediment and, since they are relatively young and not at a crucial stage in their education and there are no health issues, the judge was entitled to find that it would not be unreasonable to leave the UK. The appellant has family there and the judge did not accept the appellant's evidence that her parents were no longer alive. The first appellant has a number of skills and put forward no reason why she could not return to Nigeria.

24. The judge reached a decision open to him and did not err in law.

Decision

The appellants' appeals are dismissed.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Deborah Taylor

Signed Date 13 July 2019

Deputy Upper Tribunal Judge Taylor