



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/50241/2013
IA/50247/2013

THE IMMIGRATION ACTS

Heard at Field House
On the 21st August 2014

Determination Promulgated
On 29th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

MS OMOLARA BASHEEDAT IPAYE
MASTER OLUWISIMI A T ADEPOJU

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J René of Counsel
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by Omolara Basheedat Ipaye and her son Oluwisimi A T Adepoju against the decision of First-tier Tribunal Judge Thanki following a hearing at Richmond on the 13th May 2014. In a determination promulgated on the 3rd June 2014 their application to remain in the UK outside the Rules pursuant to article 8 and

under section 55 of the Borders, Citizenship and Immigration Act of 2009 was rejected for the reasons given in the determination.

2. The complaint made about the determination is that the Judge had placed too much weight on the previous determination from January 2012 and had failed to take into account that the second Appellant was by the date of the hearing 7 years old and fell within the scope of paragraph 276ADE of the Immigration Rules. It was submitted that there needed to be anxious scrutiny which was lacking and that his best interests under section 55 of the 2009 Act would demand that he and his mother be allowed to remain.
3. It is clear from the record set out within the determination that the Judge had in mind section 55, article 8 and also paragraph 276ADE. He also received evidence relating to both the first Appellant, the medical situation of her mother and what she had to say about the educational system that would be available to them on return to Nigeria with the observation that she could not afford to pay for her son's education.
4. There is an error in the determination because the Judge appears to proceed on the footing that is set out in the submission section that private life only begins after the age of 4. That is incorrect. Private life begins from the moment of entry into the UK. Whether or not the seven years is measured by birth or entry is irrelevant. There is, however, clear authority to the effect that the first four years carry less weight because in those years a child is more heavily focused on the family and it is only once they start to attend formal education that a private life in the wider sense begins to develop.
5. However, the requirement under paragraph 276ADE is that not only has the child been in the UK for seven years but that it would not be reasonable to expect them to return to their country of nationality.
6. Mr René in succinct and helpful submissions has referred to the case of Tinizaray in paragraph 16 referring to the decision-maker's duty to safeguard and promote the welfare of children and to prevent the impairment of their development. The argument essentially is that to take him out of the UK educational system at this stage would impair his progress such that section 55 would be breached.
7. Against that submission there are several points which are reflected in the decision of the Supreme Court in Zoumbas, and I quote from paragraph 24:

“There is no irrationality in the conclusion that it was in the children's best interests to go with their parents to the Republic of Congo. No doubt it would have been possible to have stated that, other things being equal, it was in the best interests of the children that they and their parents stayed in the United Kingdom so that they could obtain such benefits as healthcare and education which the decision-maker recognised might be of a higher standard than would be available in the Congo. But other things were not equal. They were not British citizens. They had no right to future education and healthcare in this country. They were part of a close-knit family with highly educated parents

and were of an age when their emotional needs could only be fully met within the immediate family unit.”

8. I appreciate that the parents in the case of Zoumbas had what was described in the decision as an unedifying immigration history but their situation is not markedly different from that of the Appellants in this case. The first Appellant entered the UK herself with no expectation of being permitted to remain and having stated an intention to return to Nigeria and it was obvious that this stage would come, besides which she has overstayed for two years since the January 2012 determination.
9. Although the Judge approached or appears to have approached the position from a starting point which may not be correct I am satisfied in fact that paragraph 40 shows that he properly approached the issues in substance. At paragraph 40 he said:

“In the appeal before me the new Rules in relation to family and private life rights are engaged and fully considered by the Respondent. Neither Appellant qualifies under Appendix FM. As to private life rights they did not qualify under paragraph 276ADE either. If I find that there are exceptional circumstances in their case and consider the five step analysis Razgar as considered and analysed by the previous determination I would reach no different conclusion. First, the second Appellant’s position under section 55 has been fully considered. He will remain with his mother which is what is required for any dependent child in order to have a full and meaningful life. There is nothing indicated to suggest that he would not be able to receive adequate education in Nigeria.”

That finding is not challenged.

10. Accordingly I find that read overall the Judge did consider, albeit that he did not state his position as accurately as he could or should, all of the factors that he had to. The determination shows a proper line of reasoning. There is no error and the determination to the Upper Tribunal is dismissed and the First-tier Tribunal’s determination stands.

Signed

Date 28th August 2014

Deputy Upper Tribunal Judge Parkes