



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

Appeal Numbers: IA/27662/2014
IA/27663/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9 September 2015**

**Decision and Reasons
Promulgated
On 18 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**MS MARY MOGBONJUBOLA IDOWU OJEDIRAN
MISS ELIZABETH ABISOLA OJEDIRAN
(Anonymity direction not made)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms S. Akinbolu of Counsel

For the Respondent: Miss. E. Savage, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellants against a decision promulgated on 16 March 2015 by First-tier Tribunal Judge NMK Lawrence, which dismissed the Appellants' appeals against the decisions of the Respondent to refuse leave to remain in the United Kingdom under Article 8 ECHR.

2. Permission to appeal to the Upper Tribunal was granted on the basis that it was arguable that the First-tier Tribunal failed to follow the approach outlined in Razgar, namely that subsequent questions only arise if Article 8 is engaged.
3. I announced at the hearing, having heard submissions from both parties, that I found that the decision did not contain any material errors of law capable of affecting the outcome of the decision. I set out my reasons below.

Submissions

4. It was submitted in the grounds of appeal that the judge had made irrational and unreasoned findings. In particular, I was referred by the Appellants' representative to paragraph [16(ii)] where the judge found that there would be continuity of educational provision as "the educational system is similar to that which exists in the UK, Nigeria being a former colony of the UK". It was also submitted that it was irrational to find that that because the second Appellant lived with her mother, who retained ties to Nigeria, she had therefore also retained ties to Nigeria. It was submitted that he had failed to consider the evidence of the second Appellant's strong ties to the United Kingdom, and that there was no reference to the details, including the school letters. I was referred to page 20 of the Appellants' bundle, a letter from Globe Academy dated 22 October 2010, and page 22, a letter from St Charles Catholic Sixth Form College, which is undated, but refers to enrolment in September 2012. It was submitted that these letters were evidence of the second Appellant's educational progress and expectations.
5. It was also submitted that the judge had diminished the length of residence of the second Appellant (paragraph [16(iv)]). It was submitted that he had reversed the position whereby the older that a child is, the more important her ties. It was submitted that this paragraph detracted from the fact that the second Appellant had spent nine years in the United Kingdom.
6. In relation to his findings under Article 8, it was submitted that these were "even more irrational". There had been no lawful assessment of the Article 8 claim and the second Appellant's ties to the United Kingdom such as school, her brother and membership of a choir had not been considered. It was submitted that her nine year residence, her education and prospects, and her ties to friends, family, culture, society and church should all have been considered. I was referred to paragraph [16(iii)]. The linguistic difficulties which would be faced by the second Appellant had not been resolved by the judge.
7. It was submitted that neither the decision under paragraph 276ADE nor the decision under Article 8 were sustainable on the findings made.

8. In relation to the judge's consideration of the immigration rules, the Respondent's representative submitted that this was no more than a disagreement with the findings of the judge who had properly considered reasonableness in paragraphs [15] to [21]. The case law had been referred to in paragraphs [16], [17], [20] and [21], and his decision had been well reasoned and in accordance with the case law.
9. In particular, in relation to paragraph 4.1 of the grounds of appeal, it was open to the judge, having heard the evidence of the second Appellant, to find that she was used to Nigerian norms and culture. He was entitled to find that education was available in Nigeria, and any error in his finding that the systems were similar because Nigeria was a former colony could not be material. The fact that education would not be of the same standard as that in the United Kingdom did not alone render the decision unreasonable.
10. In relation to paragraphs 4.2 and 4.5, it was open to the judge to find that, as the second Appellant had lived in Nigeria until she was 10 years old, she would be able to pick up the language again. It was submitted that it was difficult to see how this could have made a difference to the decision as English is the official language of Nigeria.
11. In relation to paragraphs 4.3 and 4.7, the guidance in Azimi-Moayed (decisions affecting children; onward appeals) [2013] UKUT 00197 (IAC) had been taken into account by the judge in paragraph [16]. In particular paragraph (iv) of the headnote to Azimi-Moayed had been taken into account. In relation to paragraph 4.4, seven years was not a trump card.
12. It was submitted that, taking into account all of the judge's findings, the criticisms in relation to his consideration of paragraph 276ADE were only a disagreement with his findings.
13. In relation to Article 8 outside the immigration rules, it was submitted that the decision that there was no interference with the family life of the Appellants was open to the judge. Other family members had been considered in paragraphs [32] and [33]. Relevant case law had been taken into account and his findings were open to him.
14. In relation to private life, the judge's finding that there was no interference in the Appellants' private lives was given detailed and cogent reasoning by reference to the case law of Nnyanzi v UK 21878/06 [2008] ECHR. It was submitted that it was open to the judge to find that Article 8 was not engaged in respect of private life. The grounds failed to identify an error of law in the judge's general approach to Razgar set out at paragraph [34]. Whilst the judge had found no interference, nevertheless the alternative position had been considered. Even if there was an error of law in the judge's consideration of Article 8, this was not a material error, as detailed, cogent and sustainable reasons had been given by the judge as to why the decision was proportionate.

15. In relation to accommodation in Nigeria, the Respondent's representative submitted that there had been inconsistent evidence between the Appellants and that the judge's finding that accommodation was available was open to him (paragraph [41]).
16. In response, it was submitted that there were two errors, the failure to establish from what the second Appellant would be removed, and the failure to consider to what she would be returning. There was a lack of factual findings regarding her best interests. The judge's finding that the decision would not interfere with her private life coloured the remainder of his assessment under Article 8.

Findings

17. It is apparent from the decision that the judge considered all of the circumstances of both Appellants in his consideration of their Article 8 rights both under the immigration rules and outside the immigration rules.
18. In relation to his consideration of the second Appellant's position under paragraph 276ADE, having found that she had been in the United Kingdom for seven years at the date of application, the judge correctly identifies that the issue is whether it would be reasonable to expect her to leave the United Kingdom [15]. He states that this issue is to be determined in the light of her best interests [15]. He sets out the case law in relation to the best interests and considers the second Appellant's circumstances as against each specific guideline.
19. His findings in paragraph [16(ii)] were open to him on the basis of the evidence before him. He correctly stated the length of time for which the second Appellant had lived in Nigeria. He found that there was an education system in Nigeria where the second Appellant could continue her education. The fact that he found that the educational system was similar to the UK as Nigeria was a former colony is not a finding capable of affecting the decision, given that he had found that there would be continuity of educational provision as there is education available in Nigeria. His finding that the second Appellant continued to be involved in Nigerian social and cultural norms was open to him given the evidence.
20. In relation to the issue of the second Appellant's language (paragraph [16(iii)]) his finding that she would be able to pick up her native tongue again, given that she grew up speaking it in Nigeria until the age of 10, was open to him. In any event, as submitted by the Respondent's representative, the official language of Nigeria is English.
21. In relation to time spent by the second Appellant in Nigeria and the United Kingdom, it is clear from the decision that the judge was aware of the periods of time that she had spent in each. He correctly states that she had spent over 10 years in Nigeria [16(ii)], [18(ii)]. He refers to the guidance relating to the significance of time spent when a child is older. The judge was aware that the second Appellant had been in the United

Kingdom from the age of 10 onwards. As submitted by the Respondent's representative, having spent seven years in the United Kingdom is not a trump card.

22. In paragraph [17] the judge considered the Court of Appeal's guidance in EV (Philippines) [2014] EWCA Civ 874, and once again considered the guidance alongside the circumstances of the second Appellant. Again, the decision shows that he was aware of how long she had been in the United Kingdom. He considered her education and found, as was open to him, that she was not at any critical stage of her education having completed secondary school. His finding that she has grown up in the Nigerian environment in the UK was open to him on the basis of the evidence before him. He found in paragraph [20] that the second Appellant has continued to be exposed to the Nigerian environment "sufficient to keep her familiarised with it" so that her return to Nigeria is not adverse to her best interests.
23. It was submitted that the judge had failed to consider all of the evidence in detail and I was referred to the school letters (paragraph [4] above). The judge stated in paragraph [6] that he had taken into account the evidence in the Respondent's and Appellants' bundles. The fact that he has not referred specifically to these letters is not an error of law. The first letter is dated October 2010 and refers to the second Appellant's education. It refers to her being a member of the school choir, but the fact that she was a member of a choir in 2010 is not enough to affect the decision. The second letter offers her a place in September 2012 at Sixth Form College. It refers to her progress in her BTEC programme. However again, this letter alone, and the information in it, cannot be said to make a material difference to the outcome of the decision.
24. There is no error of law in the fact that these two letters were not specifically referenced. The judge was aware that the second Appellant had received education in the United Kingdom. The fact of having received this education and having been in school choir are not enough for him to find that it would be unreasonable for her to return to Nigeria. Her educational progress and expectations are not enough to affect the outcome of the decision, given the point that she had reached in her education, and the totality of the evidence before the judge.
25. I do not find that there is any error of law capable of affecting the outcome of the decision in the judge's consideration of the second Appellant's position under the immigration rules, paragraph 276ADE.
26. In relation to the consideration under Razgar, the judge found that there was no interference with the Appellants' Article 8 rights. His finding that there would be no interference with their family life was open to him given that they would be returning together. He considered other family members in paragraphs [32] and [33]. In relation to private life, even though he found that there was no interference with their private lives, nevertheless he went on to consider the further Razgar questions, and to

consider the issue of proportionality. Any error of law in continuing with the consideration of the further questions in Razgar is not material given his full consideration of the Appellants' circumstances in his assessment of proportionality.

27. It is clear both from the findings in relation to paragraph 276ADE and to the findings in relation to proportionality, that the judge has taken into account all of the Appellants' circumstances. It was submitted that he had failed to take into account the second Appellant's period of residence in the United Kingdom. There is no merit in this. It is clear from the decision that the judge is aware of the length of time the second Appellant has been in the United Kingdom. It was submitted that he had failed to take into account the second Appellant's education and prospects. Again, there is no merit in this. The judge found that she had completed her secondary education in the United Kingdom and therefore that she was not at a critical stage of her education ([18(i)]). He found that there was education available in Nigeria. It was submitted that he had failed to take into account her ties to friends, family, culture, society and church. The judge took into account her family in paragraphs [32] and [33]. He took into account her church activities in the United Kingdom in paragraph [16(ii)]. As stated in paragraph 7, he considered all of the evidence in the bundle. It is clear from his findings that he had taken into account the second Appellant's ties to the United Kingdom.
28. Given that the judge fully considered the Appellants' circumstances, there can be no material error of law in his consideration of proportionality, given that he was aware of all of the Appellants' circumstances, and took them into account in the balancing exercise.
29. In relation to the question of accommodation in Nigeria the judge found that the evidence of the two Appellants was contradictory (paragraph [41]). The second Appellant believed that accommodation was available in Nigeria. The judge's finding that they would not be destitute, as claimed by the first Appellant, but that they would have family members who would be able to accommodate them was open to him on the basis of the evidence before him.
30. The judge correctly considered section 117B of the 2002 Act. He was required to consider the fact that the Appellants had been overstayers for the majority of their time in the United Kingdom.
31. Taking the decision as a whole, the judge has considered all of the Appellants' circumstances and has made findings which are reasoned and cogent. Neither the grounds nor the decision point to any error of law capable of affecting the outcome of the decision.

Decision

The decision of the First-tier Tribunal does not involve an error on a point of law capable of affecting the outcome of the decision. The decision of the First-tier Tribunal stands.

Signed:
Deputy Upper Tribunal Judge Chamberlain

Date: 17 September 2015