



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/04990/2015
& AA/04987/2015

THE IMMIGRATION ACTS

Heard at Birmingham
On 16 February 2016

Decision & Reasons Promulgated
On 3 March 2016

Before

Deputy Upper Tribunal Judge Pickup

Between

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[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellants: Mr Muman, instructed by Duncan Lewis & Co Solicitors
For the respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, mother and dependent minor daughter, citizens of Nigeria, appeal against the decision of First-tier Tribunal Judge Pacey promulgated 1.7.15, dismissing on all grounds their linked appeals against the decisions of the Secretary of State, dated 4.3.15 & 5.3.15, to refuse their asylum, humanitarian protection and human rights claims, and to remove them from the UK. The Judge heard the appeal on 17.6.15.

2. First-tier Tribunal Judge Brunnen granted permission to appeal on 24.7.15, limited to the first ground only.
3. Thus the matter came before me on 16.2.16 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons set out herein, I find no material error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Pacey to be set aside.
5. In summary, the grounds of application for permission to appeal argue that the First-tier Tribunal Judge failed to consider the best interests of the son of the first appellant. However, it was the first appellant's case that she intended to leave her son with a friend in the UK and go to live permanently in Dubai.
6. In granting permission to appeal, Judge Brunnen noted that given the first appellant's intentions to leave her son behind in the UK whilst she went to make a new life for herself in Dubai, consideration of the best interests of her son may not have assisted her in resisting her removal from the UK, but that it was arguable that those best interests should have been considered.
7. The grounds also submitted that the judge erred in finding the option of internal relocation open to the appellants and failed to consider background evidence relating to the cruelty suffered by widows in Nigeria. However, Judge Brunnen noted, for good reason, that neither of these grounds identify any arguable error in the decision. "The judge gave clear and sufficient reasons to support her findings in respect of internal relocation. There was no independent evidence before the Judge of cruelty to widows. The grounds do not identify the evidence that the judge is said to have failed to consider."
8. With respect, I fully agree with the observations of Judge Brunnen in relation to internal relocation and 'cruelty to widows' issues. The grounds make vague and unsubstantiated assertions in regard to these issues. However, it follows that the only ground on which permission was granted relates entirely to the first appellant. The second appellant did not renew the application for permission to appeal to the Upper Tribunal and thus there is no valid appeal to the Upper Tribunal in the case of the second appellant. In the circumstances, I can consider the second appellant's case no further.
9. Mr Muman pointed out the limited references to the minor child of the first appellant, a dependent on her asylum claim, beginning at §12, where he is not named. Other references appear at §27, §72, §73. Other references to best interests are in relation to the second appellant's child, at §62 and §104. Mr Muman submitted that the judge failed to take into account the circumstances of the child of the first appellant and made a number of submissions about this child having entered the UK in 2010 as a visitor in the company of the first and second appellants. He is now 16,

has been in state education since 2011, is studying for GCSEs, and is alleged to have a wide circle of friends.

10. Nevertheless, Mr Mills conceded that there ought to have been some consideration of the best interests of the first appellant's child and that the failure to do so was an error.
11. However, for the reasons set out below, I accept Mr Mills' submission that this omission was not and could not have been material to the outcome of the appeal.
12. There is no witness statement from this child. In fact, there is barely any reference to this child in the witness statements of either the first or second appellants. There was very little evidence in the appellants' bundle of 32 pages that related to this child, only some minor reference naming him at school. There was no evidence of the claimed wide circle of friends or of any private life outside the home other than the bare fact he was at school and pursuing GCSEs.
13. There was nothing advanced at the First-tier Tribunal in evidence or submissions to suggest that the best interests of this child outweighed the public interest in removal of the appellants. The first appellant was on her way to Dubai, having left the child in the care of a friend, and intending to apply for asylum and settle in Dubai. The history demonstrates that she did something similar previously. She brought the child to the UK in 2010 but then returned to Nigeria, leaving him here in the UK until she returned in 2012. Frankly, there was no evidence before the First-tier Tribunal to suggest that the best interests of the child required the first appellant to be permitted to remain in the UK. There was no evidence to suggest that her intentions in leaving him behind were not in fact in his best interests. Even if he had to return to Nigeria with his mother, the refusal decision pointed out that education is available in Nigeria. There was no evidence of any ties outside the home. In short, on the peculiar circumstances of this case and in the absence of any significant evidence in support, it is impossible to construct a best interests argument that could even begin to outweigh the public interest in removal of the first appellant to Nigeria, whether or not the child accompanied her.
14. The reliance on this ground of appeal at this late stage when the child's interests were not advanced by the appellants at the First-tier Tribunal, if not ignored entirely, and certainly not supported by evidence, amounts to no more than a searching around for some straw to clutch at to resist the first appellant's removal from the UK following the complete failure of her asylum claim. In the circumstances, if there was an error of law in the judge's failure to address the best interests of the child, it was not material to the outcome of the appeal.

Conclusions:

15. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeals of each appellant remain dismissed on all grounds.



Signed
Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order.

Given the circumstances, I continue the anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.



Signed
Deputy Upper Tribunal Judge Pickup

Dated