



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

Appeal Number: IA/07017/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 29 February 2016**

**Decision & Reasons
Promulgated
On 29 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**AYODELE EMMANUEL EHIMHEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Anyene, instructed by Forward & Yussuf Solicitors
For the Respondent: Mrs S Sreeraman, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against the decision of the First-Tier Tribunal (“FtT”) to dismiss his appeal against the decision of the respondent to refuse his application for leave to remain in the UK on the basis of his private and family life.

2. The appellant is a citizen of Nigeria born on 22 May 1977 who entered the UK on 8 November 2006 on a student visa and thereafter was granted five further periods of leave to remain as a student, the final grant expiring on 30 October 2014.
3. Whilst in the UK he commenced a relationship with his current partner, a citizen of Nigeria, who entered the UK in 2004 on a visitor visa and remained after her visa expired. The appellant and his partner have three children, all of whom were born in the UK. Their dates of birth are: [] 2007, [] 2010 and [] 2013.
4. On 28 October 2014 the appellant applied for leave to remain on the basis of his private and family life. In a letter dated 27 January 2015, the respondent refused the appellant's application on the basis that he did not satisfy either Appendix FM or paragraph 276ADE(1) of the Immigration Rules and that there were no exceptional circumstances to warrant granting him leave to remain under Article 8 ECHR outside the Rules.
5. The appellant appealed and his appeal was heard by FtT Judge Maxwell who, in a decision promulgated on 1 September 2015, dismissed the appeal. The FtT firstly found that the Immigration Rules could not be satisfied. It then considered the appeal outside the Rules following the well established structured approach set out in Razgar. Having found that Article 8 was engaged it turned to the question of whether the respondent's decision to refuse the appellant's application was proportionate.
6. The FtT directed itself to consider Section 117B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") including Section 117B(6) which stipulates that the public interest does not require the removal of a person where (a) the person has a genuine and subsisting relationship with a qualifying child and (b) it would not be reasonable to expect the child to leave the UK.
7. The FtT found that the appellant had a genuine and subsisting relationship with a qualifying child given that his oldest child was seven years old and born in the UK. However, it did not accept that it would unreasonable to expect this child to leave the UK. The FtT's reasons for so finding are set out at paragraph [29]. In sum, the FtT found that is in the best interests of the appellant's children, who are all still young, to remain with the family unit and that, although it is in their interests to continue their education in the UK, if they went to Nigeria with their parents they would be with their family and educated locally. The FtT also found that the appellant is well qualified and resourceful and would be able to integrate into life in Nigeria where his mother and six siblings live.

Grounds of appeal and submissions

8. The grounds of appeal argue that the FtT failed to properly take into account the best interests of the appellant's children and did not give sufficient consideration to the time the eldest child has resided, and been educated, in the UK and the difficulties he would face in being removed to Nigeria. The grounds state that the FtT did not take into account the emotional and psychological effects of his removal.
9. Permission to appeal was granted by FtT Judge Hollingworth. In granting permission, Judge Hollingworth stated that it was arguable that relevant factors in the social, educational and cultural spectrum in respect of the eldest child had not been adequately considered.
10. In his submissions before me, Mr Anyene argued that the FtT had failed to fully consider the eldest child's private life including in particular his educational and social life in the UK. He submitted that Zoumbas [2013] UKSC 74, which had been cited by the FtT, could be distinguished from the present appeal because the appellant had been in the UK lawfully. He also argued that the FtT had failed to differentiate between the children as there is no analysis in the decision of the specific interests of the eldest child as opposed to consideration of the interests of the children as a whole.
11. Mrs Sreeraman submitted that that the FtT had engaged fully with the relevant evidence that was before it about the appellant's children and reached a decision that was consistent with the case law including EV (Philippines) [2014] EWCA Civ 874 and Azimi-Moayed and others (decisions affecting children; onward appeals)[2013] UKUT 00197(IAC). She argued Zoumbas could not be distinguished. That decision, like this appeal, turned on an assessment of the best interests of the children. She submitted that the FtT's decision was not flawed in any material way.

Consideration

12. Where removal of a child from the UK is contemplated there must be a fact specific assessment of his or her best interests. A wide range of factors should be considered. As explained in EV (Philippines):

A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens.
13. The FtT has not undertaken a separate or distinct analysis in respect of each of the appellant's three children. Its consideration of why it would be reasonable for the appellant's children to leave the UK is set out in

paragraphs [28] - [30]. These paragraphs refers to “the interests of the appellant’s children” rather than to each child separately.

14. However, whilst it would have been preferable – and would have added to the decision’s clarity – had the FtT made separate findings about each child, when the decision is read as a whole and considered in the context of the evidence that was before the FtT, it is apparent that the FtT has considered the evidence before it relevant to the interests of each of the children.
15. The evidence before the FtT was that the appellant’s oldest child (born in October 2007) speaks only English, is well integrated into society in the UK and is progressing well in (and benefiting from) his education in the UK. The evidence concerning the middle child (born in February 2010) was similar. The youngest child is under three and as such is at an age where his focus is still very much on his parents. There was no evidence before the FtT that would support a finding that the appellant’s children would suffer emotional or psychological damage by moving to Nigeria. Nor was there evidence to indicate any special medical or other reason that would make it unreasonable or particularly challenging for any of the children to relocate.
16. In considering whether it would be reasonable to expect the appellant’s children to leave the UK, the FtT took into account a wide range of factors including: (a) their ages; (b) the time they had been in the UK; (c) their education (including the appellant’s educational preferences and the provision that would be available to them in Nigeria); (d) that they have spent their entire lives in the UK and only speak English; (e) that in Nigeria they would be with their parents; and (f) that the appellant is qualified and resourceful and has ties in Nigeria including a mother and siblings.
17. I am satisfied that by setting out and examining the factors listed above, the FtT has undertaken an assessment of the best interests of the appellant’s children that is consistent with the approach taken in Zoumbas and EV (Philippines). Based on the evidence before it, and for the reasons it gave, the FtT was entitled to find that it would be reasonable to expect the appellant’s children to move to Nigeria with their parents and that the removal of the appellant is a proportionate interference with his (and his family’s) rights under Article 8 ECHR.

Decision

- a. The appeal is dismissed.
- b. The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 11 March 2016