



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/05930/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Manchester
On: 6th December 2017**

**Decision Promulgated
On: 12th December 2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**MA
(ANONYMITY ORDER MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Nicholson, Counsel instructed by Greater Manchester Immigration Aid unit
For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a female national of Nigeria born in 1988. She appeals with permission the decision of the First-tier Tribunal (Judge Tobin) to dismiss her appeal on human rights grounds.

Anonymity Order

2. This appeal turns on the presence in the United Kingdom of the Appellant's minor children. I am concerned that identifying the Appellant could lead to the identity of the children being revealed in the public domain. Having had regard to Rule 14 of the Tribunal

Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Decision of the First-tier Tribunal

3. The Appellant claims to have been in the UK since 2004. Before the First-tier Tribunal she advanced a protection claim based on allegations of trafficking. These matters were all rejected by the First-tier Tribunal and no issue is taken with those findings.
4. There was a second limb of the Appellant’s case before the First-tier Tribunal. That was one based on the Article 8 rights of her four children, all born in the UK. Two of those children, the eldest aged 9 and the second-eldest aged 7, were “qualifying” in the sense that they met the definition of the term set out at s117D(1)(b) of the Nationality, Immigration and Asylum act 2002: “has lived in the United Kingdom for a continuous period of seven years or more”. It was the Appellant’s case that it was not now reasonable to expect those children to leave the UK, and that as a consequence of section 117B(6) it would not therefore be in the public interest to remove her. In making that case she relied on a report by an independent social worker, Ms Christine Brown. In addressing that second limb of argument the Tribunal said this:

“So far as s117B(6) is concerned, I note the appellant’s children are doing well at school in the UK. I have read the report of Ms Christine Brown. I note her recommendations but I am not impressed by the substance of this report nor am I persuaded by this. I can detect no compelling basis for me – as opposed to Ms Brown – to form the conclusion to say that it is not reasonable for the children to return to Nigeria with their parents. This would keep the family intact and pursuant to s55 BCIA 2009 be in the best interests of the children. The appellant had not provided any evidence which indicated that she would not be able to maintain her children in Nigeria or (save as to the FGM point, which I reject) that she would be unable to provide for their safety and welfare. The appellant’s children would be able to go to school in Nigeria. I believe that they would be familiar with the customs, culture, language and social norms of Nigeria through their parents. Consequently, they would be able to

adapt relatively easily to life in Nigeria, their parent's home country. I am not persuaded by Ms Brown's contention to the contrary, I determine that young children are typically very adaptable and are capable of making new friends should they be required to relocate due to a change in their parents' circumstances".

The appeal was accordingly dismissed.

The Error of Law

5. The appeal came before me on the 17th August 2017 sitting in Liverpool. The Respondent was that day represented by Senior Presenting Officer Mr Harrison. In a written decision promulgated on the 18th August 2017 I found it unnecessary to address Mr Nicholson's grounds in any detail since I was satisfied that the determination contains two significant errors in approach such that the findings on Article 8, and whether it would be 'reasonable' to expect the qualifying children to leave, cannot be sustained.
6. The first error, accepted by Mr Harrison, is a manifest lack of reasoning in rejecting the expert evidence of the independent social worker about the likely impact of removal on these children. The Tribunal was by no means obliged to accept Ms Brown's conclusions, but if it considered her evidence lacking, uninformative or plain wrong, it was incumbent upon it to explain why. There are no reasons at all as to why her evidence is given no weight.
7. The second error relates to the way that the Tribunal has approached the question of 'reasonableness'. The Tribunal did not need to identify a "compelling basis" to find it unreasonable that these children be removed. All it had to do was the following.
8. To begin with it needed to identify what "reasonable" meant in the context of s117B(6). That matter is helpfully addressed by the Court of Appeal in MA (Pakistan) [2016] EWCA Civ 705. In that case Elias LJ (albeit reluctantly) accepted that the evaluative exercise does not relate simply to the child. It must also encompass matters pertaining to the family as a whole, including the factors at s117B(1)-(5) NIAA 2002 as they relate to the parents. The Court stressed, however, that in that balancing exercise *significant* weight must be attached to the private life established by the child over the period of long residence *in the UK*. This much is made clear by the Respondent's own policy statement, the Immigration Directorate Instruction 'Family Migration: Appendix FM Section 1.0b *Family Life (as a Partner or Parent) and Private Life: 10-Year Routes*' ("the IDI"), the relevant part of which reads as follows:

11.2.4. Would it be unreasonable to expect a non-British Citizen child to leave the UK?

The requirement that a non-British Citizen child has lived in the UK for a continuous period of at least the 7 years immediately preceding the date of application, recognises that over time children start to put down roots and integrate into life in the UK, to the extent that being required to leave the UK may be unreasonable. The longer the child has resided in the UK, the more the balance will begin to swing in terms of it being unreasonable to expect the child to leave the UK, and *strong reasons will be required in order to refuse a case with continuous UK residence of more than 7 years.*

The decision maker must consider whether, in the specific circumstances of the case, it would be reasonable to expect the child to live in another country.

The decision maker must consider the facts relating to each child in the UK in the family individually, and also consider all the facts relating to the family as a whole. The decision maker should also engage with any specific issues explicitly raised by the family, by each child or on behalf of each child.

(emphasis added)

9. This guidance recognises that after a period of seven years' residence a child will have forged strong links with the UK to the extent that he or she will have an established private life outside of the immediate embrace of his parents and siblings. It is *that private life* which should be the starting point of consideration under this Rule. The relationships and understanding of life that a child develops as he grows older are matters which in themselves attract weight. The fact that the child might be able to adapt to life elsewhere is a relevant factor but it cannot be determinative, since exclusive focus on that question would obscure the fact that for such a child, his private life in the UK is everything he knows. It will "*normally be contrary to the child's best interests*" to interfere with that private life. That is the starting point, and the task of the Tribunal is to then look to other factors to decide whether, on the particular facts of this case, these displace or outweigh the presumption in favour of granting leave. As Elias LJ puts it at paragraph 46 of MA:

"Even on the approach of the Secretary of State, the fact that a child has been here for seven years must be given significant weight when carrying out the proportionality exercise. Indeed, the Secretary of State published guidance in August 2015 in the form of Immigration Directorate Instructions entitled "Family Life (as a partner or parent) and Private Life: 10 Year Routes" in which it is expressly stated that once the seven years' residence requirement is satisfied, there need to be "strong reasons" for refusing leave (para. 11.2.4). These instructions were not in force when the cases now subject to appeal were determined, but in my view they merely confirm what is implicit in adopting a policy of this nature. After such a period of time the child will have put down roots and developed social, cultural and educational links in the UK such that it is likely to be highly disruptive if the child is required to leave the UK. That may be less so when the children are very young because the focus of their lives will be on their families, but the disruption becomes more serious as they get older. Moreover, in these cases there must be a very strong expectation that the child's best interests will be to remain in the UK with his parents as part of a family unit, and that must rank as a

primary consideration in the proportionality assessment”.

10. So, the starting point for this Tribunal was that the eldest child had spent the first 9 years of her life in this country. The Tribunal was obliged, by virtue of statute (s55 Borders Citizenship and Immigration Act 2009), policy (the IDI) and jurisprudence (MA (Pakistan)) to treat that substantial private life as a matter attracted significant weight, and to then look to see if there were any countervailing factors of such weight that would justify dismissing the appeal. It is not at all apparent from the reasoning in this determination that this is the approach that has been taken. The Tribunal has given several good reasons why it would be reasonable for these children to go (they cannot “return” to a place they have never been) to Nigeria, but nowhere has weight be attached to their long residence, or the quality of their private life here.
11. For these reasons I find the reasoning to be incomplete and set it aside.

The Re-Made Decision

12. The matter came back before me on the 6th December 2017. Mr Nicholson informed me that the eldest of the qualifying children in this family was that day making an application for British citizenship, having been born in this country and having lived here continuously for more than ten years (he turned 10 in November of this year). Mrs Aboni agreed that pursuant to section 1(4) of the British Nationality Act 1981 there would appear to be no reason why that application would not be granted. She further agreed that the only matter that the Secretary of State could point to as a counterweight to the children’s long residence was the fact that their mother is an illegal entrant who has never held any leave to remain in the UK. I accept that is a matter that must be weighed in the balance. I also give some weight to the fact that the family would be returned to Nigeria together and that as a Nigerian national their mother could be expected to make some provision for them there.
13. Having applied the relevant guidance (see above) I am however satisfied that it would strongly be in the best interests of these children to remain in the UK, where they have significant attachments (as the letters from their teachers and the social work report confirms) by way of relationships with friends and teachers; I gratefully adopt the judgement of Elias LJ that it would likely be “highly disruptive” for these children if they were to be removed from the UK today. I am satisfied that there are not “strong reasons” to remove the children. The fact that their mother is without leave is not determinative: if it were, the point of s117B(6) would be difficult to discern.
14. Having considered all of the relevant matters I am satisfied that it

would not be reasonable for either of the qualifying children involved in this appeal to leave the UK. As Mrs Aboni accepts, the result of that finding is that the appeal must be allowed.

Decisions

15. For the reasons I have given I am satisfied that the decision of the First-tier Tribunal involved material errors in approach to the question of Article 8. It is set aside to that extent.
16. The findings on asylum are preserved: the appeal is dismissed on protection grounds.
17. The findings on human rights are re-made: the appeal is allowed on Article 8 grounds.
18. There is an order for anonymity.

A handwritten signature in black ink, appearing to read 'CBE', is positioned to the left of the typed name and date.

Upper Tribunal Judge Bruce
11th December 2017