Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04884/2015

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre	**Decision & Reasons Promulgated**
On 27th July 2017	**On 19th September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

PAMELA [O]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representation
For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Gurung-Thapa, promulgated on 15th November 2016, following a hearing at Stoke-on-Trent on 24th October 2016. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant

subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Nigeria, is a female, and was born on [ ] 1979. She appeals against the decision of the Respondent dated 19th August 2015 refusing her application for leave to remain in the UK on the basis of her family and private life.

The Appellant's Claim

3. The essence of the Appellant's claim is that, having been granted a visit visa on 13th December 2007, following which she entered the UK in March 2008, she gave birth to her son, [DE], in the UK on 18th September 2011. Her son [DE] is a national of Nigeria and is now 4 years old. Although [DE] is not a British citizen and has not lived in the UK for at least seven years, he had a relationship with his father, who had leave to remain in the UK until 24th March 2019, and also with his half-brother, [J], who resides in the Netherlands with his mother.

4. The Appellant, who made her application on 14th April 2015 for leave to remain in the UK on the basis of her family and private life, cannot remain in the UK on this basis, because even if there is a relationship between [DE] and his father, the father can return to Nigeria before or when his leave expires, and he could also visit [DE] in Nigeria as he currently has leave to remain.

The Judge's Findings

5. The judge took note of the witness statement of [DE]'s father, namely, [FE], which was dated 14th April 2015, where he asserts he is the biological father of [DE], and has been resident in the UK since 2005, and obtained a right of residence as a dependant of an EEA national in June 2007 (this EEA national being the Dutch mother of [J], and was now returned back to the Netherlands with [J], the half-brother of [DE]).

6. The judge noted how [FE] was granted residence on the basis of his marriage to a Dutch national, who became his wife in 2007, and that he is presently in the process of applying for indefinite leave to remain, on the basis of his ten years' residence as a settled partner of an EEA national (see paragraph 28). The judge observed how, since [DE]'s birth, he has seen him regularly, because [DE] comes to see him virtually every weekend and often stays overnight. There was also evidence from him that [DE] has a good relationship with his half-brother [J].

7. Nevertheless, the judge held that she could not be satisfied that [FE], whose evidence was not tested in cross-examination, was playing a full and active role as [DE]'s father, because [FE] simply did not attend the hearing and the judge held that, "I reject the Appellant's claim that she was not advised for [DE]'s father to attend" (paragraph 31).

8. The judge went on to conclude that this was a case where the Appellant had spent the majority of her life in Nigeria and there is no reason to believe that she has lost all social, cultural or family ties there (paragraph 55). The Appellant was found by the judge to be an intelligent and resourceful woman who had established herself in the UK despite having no family here (paragraph 56).

9. Although the evidence from the Appellant before the judge was that [DE] only spoke English this was a language that was widely spoken in Nigeria and there was nothing to suggest that [DE] would not be able to enter the education system in Nigeria (paragraph 57).

10. The appeal was dismissed.

11. On 5th June 2017, permission to appeal was granted, with the observation that the grounds largely amounted to little more than a disagreement with the findings of the judge, but there was an arguable point in the suggestion that the Appellant's son [DE] enjoyed a family life with his half-brother, [J], who is permanently resident in the Netherlands.

12. In granting permission, the observation was made that the judge did not make findings as to the nature and extent of family life between [DE] and [J] and did not go on to consider whether such a relationship would be subject to a disproportionate interference if [DE], aged 5 years at the date of hearing, were to leave the UK with the Appellant.

13. A Rule 24 response was entered dated 16th June 2017 to the effect that the relationship between [DE] and the half-brother, [J], was duly noted by the judge, and this was evident from the points noted by the judge at paragraphs 11 and 29 of the determination.

Submissions

14. At the hearing before me the Appellant was unrepresented, but she was in attendance, and she stated that the father of [DE], [FE], was in the UK and had valid leave to remain until 2019. Her son, [DE], had spent all his life in this country. He had not had a stable life so far and it will be wrong to disrupt his life by requiring him to go to Nigeria with her, were she to be compelled to do so, and that it was in his interest to remain in this country.

15. For his part, Mr Mills submitted that there was only one issue in this appeal, and that was the relationship between the two half-brothers, namely, that of [DE], with his half-brother now resident in the Netherlands, by the name of [J]. In the midst of this, there was [FE], the two children's father. He, however, was in the UK with an EEA card, only because he had been married to a Dutch lady, in consequence of which he had been granted rights of residence.

16. That marriage, however, had subsequently broken down. It is now being said that the judge did not give adequate consideration to the relationship

between the two half-brothers. This is quite untenable, submitted Mr Mills, because one child, [J], lives in Holland with his Dutch mother, and the other child, [DE], lives in the UK, with his Nigerian mother. What relationship they have, is maintained either through modern means of communication, or by occasional visits, when during the school holidays one flies out to meet the other.

17. There is no reason why either of these things cannot happen, and continue to happen, if the Appellant were to return to Nigeria with her son, [DE]. The two half-brothers could communicate by modern mean of communication or could visit each other, because there is nothing stopping [J] from visiting [DE] in Nigeria.

18. Second, the judge at paragraph 43 had found that,

> "... there is a family life between the Appellant and [DE]. They can both be removed as a family unit. For the reasons given above I cannot accept that [DE] has a relationship with his father. Even if I am wrong in this regard, the fact is that they are not living together in a family unit" (paragraph 43).

19. Third, the right to reside in the UK of [FE], was entirely questionable at present because his initial right to remain in this country was based upon his relationship with his Dutch wife, which had since broken down, such that she had returned back to the Netherlands. She had taken [J] with her. In these circumstances, the father of both the children, [FE], had no right to remain in this country any longer.

No Error of Law

20. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

21. First, the judge has found there to be no relationship between [DE] and his father, [FE] (see paragraph 43). Even if there is such a relationship, there is nothing stopping the Appellant and [DE] going to Nigeria, as the judge found. In this respect, the findings of the judge echo the concerns of the Respondent Secretary of State as set out at paragraph 11 of the determination.

22. Second, insofar as there is a relationship between the two stepbrothers, namely, [DE] and [J], this is a relationship that is undertaken on the basis of their residence in two entirely separate countries, namely, in the United Kingdom and in the Netherlands, and it is undertaken on the basis of visits that they make to each other during the school holidays, such that the same can be done were the Appellant and [DE] to return to Nigeria. The judge has so found, and the judge has given a consideration, to the public interest requirement under Section 117B of the 2002 Act.

23. In this regard, ample consideration was given to what was in the "best interest" of the child, but noted that [DE] was not a qualifying child (see paragraph 54, and that the Appellant herself had not lost all cultural or family ties in Nigeria (paragraph 55). [DE] spoke English and could easily integrate into life in Nigeria (paragraph 57).

24. In short, this is a case where the judge has made entirely sustainable findings of fact on the evidence before her, and has applied the relevant case law (see paragraphs 32 to 42) to the facts before her. There is no error of law.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 15th September 2017