



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

Appeal Number: HU/11747/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 17 July 2017**

**Decision & Reasons Promulgated
On 25 July 2017**

Before

Deputy Upper Tribunal Judge Pickup

Between

**Olabode Odunayo Phillips
[No anonymity direction made]**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr J Plowright, instructed by Perera & Co Solicitors

For the respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Olabode Odunayo Phillips, date of birth 27.11.15, is a citizen of Nigeria.
2. This is his appeal against the decision of First-tier Tribunal Judge Raikes promulgated 13.12.16, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 12.11.15, to refuse his application made 30.7.14.
3. The appellant had sought reconsideration of the decision of 1.10.14 refusing his application, with no right of appeal. When that reconsideration

was refused, he launched Judicial Review proceedings, which were settled by consent and on the basis that the Secretary of State would reconsider the human rights claim, which resulted in the RFR decision on 12.11.15.

4. First-tier Tribunal Judge Hodgkinson granted permission to appeal on 24.5.17.
5. Thus the matter came before me on 17.7.17 as an appeal in the Upper Tribunal.

Error of Law

6. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of the First-tier Tribunal should be set aside.
7. The grounds first submit that the judge erred in law in failing adequately to take into account the best interests of the appellant's younger stepdaughter, a qualifying child, when concluding that there were no insurmountable obstacles to continuing family life with his wife in Nigeria.
8. Second, the grounds argue that the decision fails to properly consider and apply s117(6) of the 2002 Act, in failing to give adequate weight to the length of time that the child had resided in the UK, and in failing to take into account the fact that the child had never been to Nigeria, reliance being placed on MA (Pakistan) [2016] EWCA Civ 705.
9. Some factual errors are apparent in the decision, such as the judge's belief that the youngest child had left the UK for a short period in 2011, when it was in fact the older, adult, daughter of his wife. There is also an inconsistency between [1] and [5] as to the date of marriage, which was in 2012, not 2010. The judge may also have incorrectly calculated the length of time the younger daughter has been in the UK, since she was born in 2002 and came to the UK when she was almost 3 years of age. This suggests that she must have entered in 2005 and not 2007 as the judge stated. It means that at the date of the application, the child had been in the UK some 9 years, and by the date of hearing 11 years, somewhat longer than the judge gave credit for. I am not satisfied that the minor error in length of residence is material to the outcome of the appeal, as the judge accepted that both daughters had been in the UK over 7 years and thus that the younger child, still a minor, is a qualifying child, 14 years of age at the date of the hearing. I am satisfied that, on reading the decision as a whole, the judge has taken account of the best interests of the minor child of the appellant's wife. I also find that the judge made reference to s117B(6) at [15] and applied the reasonableness test for a qualifying child at [54] with reference to s177B. The judge also considered the best interests of the child at [52], [53], and generally throughout the decision.
10. At the hearing before me, reliance was placed on the August 2015 IDI

Family Migration Policy, but the grounds at [26] appear to accept that the judge gave adequate weight to the guidance. That may be a typographical error, as it runs contrary to Mr Plowright's submissions to me. However, it is not clear that this issue was argued before the First-tier Tribunal. In any event, I am satisfied that the judge gave full and proper consideration to the position of both children when considering the appellant's claim, an approach consistent with the policy.

11. I am also satisfied that significant weight was given to the circumstances of the wife and children when carrying out the proportionality balancing exercise outside the Rules pursuant to article 8 ECHR. I am not satisfied that application of the policy and the need for 'strong reasons' for refusing leave would or could have made any difference to the outcome of the appeal. The judge noted that both daughters had limited leave to remain in the UK and fully accepted their integration in the UK and the extent of family life with them as part of the family unit, but concluded that family life could continue outside the UK, if the mother chose to follow the appellant and to take her daughters with her. The judge considered the impact that would have on the family but concluded that it would be proportionate, consistent with best interests, and reasonable to expect them to leave the UK, if the mother chose to follow the appellant, but they were not obliged to do so. At [55] the judge concluded that all of these factors in favour of the appellant remaining with his wife and children in the UK were outweighed by the public interest in the overall proportionality balancing exercise. As MA (Pakistan) [2016] EWCA Civ 705 held, it does not follow that leave must be granted whenever the child's best interests are in favour of remaining, but the wider public interest considerations must be taken into account.
12. In a well-reasoned decision, the judge gave adequate reasons for concluding that on the facts of this case the decision of the Secretary of State was proportionate to the family and private life rights of the appellant and his family members. The grounds amount to nothing more than a disagreement with the findings of the judge on the evidence before the Tribunal and an attempt to reargue the case.

Conclusions:

13. 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 appeal remains 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 not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

I make no fee award.

Reasons: The appeal has been dismissed.



Signed

Deputy Upper Tribunal Judge Pickup

Dated