



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/12802/2017
HU/12805/2017

THE IMMIGRATION ACTS

Heard at Field House
On 13 November 2018

Decision & Reasons Promulgated
On 03 December 2018

Before

UPPER TRIBUNAL JUDGE WARR

Between

MS AVB
MISS ACB
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Unrepresented
For the Respondent: Ms K Pal

DECISION AND REASONS

1. The appellants are citizens of Nigeria. The first named appellant is the mother of the second named appellant. They were born in 1980 and 2003 respectively.
2. The appellants were unrepresented and did not make an appearance at the hearing. The clerk made enquiries and no messages had been received. Notice of the proceedings appeared to have been correctly served. There was no explanation for

the non-attendance of the appellants. Ms Pal had no updated information about the whereabouts of the appellants. In all the circumstances I was satisfied that it was appropriate to proceed with the hearing under Rule 38 and that it was in the interests of justice to do so.

3. The appellants appeal the refusal of their human rights claim on 10 October 2017. The Secretary of State took into account the fact that the first appellant had numerous convictions and was a persistent offender and that her conduct was not conducive to the public good and she could not meet the requirements of paragraph S-LTR.1.6. In addition the appellant had in the case of a previous application submitted a false United States of America passport and birth certificate claiming that the second appellant was a citizen of the United States when in fact she was a Nigerian national. Accordingly the appellant could not meet the requirements of paragraph S-LTR.2.2. Although the second appellant had lived continuously in the UK for at least seven years it was not unreasonable to expect her to leave the UK with the first appellant, her mother, as a family unit. The respondent noted that the first appellant did not meet the various requirements of the Rules including financial and English language requirements.
4. In considering whether there were exceptional circumstances the respondent took into account the best interests of the child as a primary consideration but noted that the second appellant would be returning back to Nigeria with the first appellant who could help her adjust to the ways and customs of Nigeria. It was acknowledged there would be a degree of disruption but the second appellant could continue any friendships built up in the United Kingdom using modern technology. Reference was made to Section 55 of the Borders, Citizenship and Immigration Act 2009 and it was considered that in the light of the fact that the child would be accompanying her mother and that both were citizens of Nigeria the second appellant would be able to continue her education and she had not reached an age where she would have gained non-transferrable skills. There were no special educational or medical needs that the respondent had been made aware of.
5. In relation to the second appellant, she could not meet the relevant requirements of the Rules. While she was under the age of 18 and had lived continuously in the UK for at least the last seven years it would be reasonable for her to leave and return to Nigeria with her mother. She did not meet the requirements of paragraph 276ADE(1)(iv) of the Rules.
6. The appellants appealed and their appeals came before a First-tier Judge on 11 April 2018. The appellants were then represented by Mr Read, of Counsel. He relied on paragraph 276ADE(1)(iv) and it was submitted that she met the requirements of the Rules since she was under the age of 18 and had lived continuously in the UK since the age of 1. She was now 14 and it would not be reasonable to expect her to leave the UK. If she were successful it would lead to the appeal of the first appellant being allowed on human rights grounds. Mr Alagh, who appeared for the respondent, pointed out that there had been a previous hearing before First-tier Tribunal Judge

Greasley in 2014 where most of the issues had been dealt with and reference was made to the guidelines in **Devaseelan (Sri Lanka) [2002] UKIAT 00702**.

7. The First-tier Judge concluded his determination as follows:

“18. There has been no argument or submission that the starting point in my consideration should not be the Determination of Judge Greasley. During the submissions it was suggested by Mr Read that proper consideration had not been made by Judge Greasley of the second Appellant’s best interests. I was however provided with the Notice of Decision of Application for Permission to Appeal against the Determination of Judge Greasley which was refused by Upper Tribunal Judge Kebede on 5 June 2014. Although I have not seen the grounds of the appeal, in the Notice of refusal at paragraph 2 is the following finding ‘contrary to the assertion in the grounds, he did give consideration to the circumstances of the second Appellant and in so doing took account of her best interests. He was entitled to reach the conclusions that he did on all the evidence before him and the grounds of appeal do not disclose any arguable errors of law in his decision.’

19. I deal firstly with the best interests of the second Appellant, which are a primary consideration. At paragraphs 35 and 36 of his Determination, Judge Greasley found the following:

‘I find her daughter will be able to transfer into the Nigerian educational system, although I do accept there will be some degree of disruption involved. The Appellants have visited Nigeria in recent years. They have family member there who can provide support and assistance ... In relation to section 55 of the Borders, Citizenship and Immigration Act 2009, the best interests of the second Appellant are maintained, I find by being accompanied by her mother in Nigeria. I find the second Appellant will be able to adapt to life in Nigeria where she has visited in the past and with whose culture and traditions I find she will be familiar with.’

20. Mr Read has submitted that four years is a significant time in the life of a 14-year-old. I accept that. However the evidence points to the second Appellant having shown quite substantial ability to adapt. During her mother’s recent imprisonment, which was over several months, she stayed with her aunt at weekends and during the week stayed with her mother’s best friend. She undertook the travel without apparent difficulty. The school reports which have been exhibited demonstrate that what may be considered as instability has apparently had no adverse effect on her. At page 27 of the bundle her class teacher made the following comment on 11 December 2017:

‘C (the second Appellant) has made a good start to year 10. She is a hardworking student who has the potential to succeed in the future. She has solid attendance and punctuality and can be very focused upon her studies. Well done! Keep it up!’

21. The second Appellant gave evidence that her GCSEs will not be sat until the end of the next academic year. There are no imminent exams apparently of any importance. There is no reason to believe that any

disruptive effect in being taught in Nigerian schools would be substantial. She has visited Nigeria in the past and other are family members in Nigeria. The first Appellant gave evidence that since her arrest and imprisonment in February 2017 she has received financial support from friends and family in the sum of £800 per month. Part of that sum was used for the benefit of the second Appellant. There was no credible evidence to suggest or reason to believe that financial assistance will not continue. The first Appellant has given evidence that she has six brother and sisters a number of who remain in Nigeria. On the evidence made available today there is no reason not to believe that the second Appellant would be well supported in Nigeria and would continue to show the adaptability and resilience that is noted above. I discount any of the criminal behaviour of her mother in my consideration and reach the same conclusion as Judge Greasley that her best interests would be maintained by being accompanied by her mother in Nigeria.

22. Turning to the first Appellant, her criminal behaviour was described at some considerable length, at paragraphs 6 to 12 by Judge Greasley. There has been no challenge to the entries made in the PNC printout. At page 1 of the printout there is a summary of her convictions as follows: one offence against property; six fraud and kindred offences; 18 theft and kindred offence; six offences relating to police/courts/prisons. In giving evidence today the first Appellant referred to having reached an understanding as to why she committed offences. She acknowledged that notwithstanding conditional discharges and community orders she was sentenced to 8 months imprisonment on 22 March 2017. Although she has now had the benefit of completing her LLB there is no credible evidence that she is reformed person.
23. The offence for which she was imprisoned in March 2017 was, she has stated in evidence, for a matter which related to the commencement of her employment in 2015. She used false documentation. It is significant and revealing as to her character that she has apparently learned nothing from her experiences and the comments made by Judge Greasley in 2014 at paragraphs 28 and 29 which is in the following terms:

‘Whilst the offences in themselves may not be individually serious, collectively the Appellant’s conduct over a period of time, does, in my judgment reflect a serious and determined willingness to commit offences of dishonesty. The fact that the Appellant when apprehended has on different occasions used an alias adds to the deceptive nature of these matters. Eight different aliases are noted in police records. She has shown a blatant disregard for the immigration laws of the UK and a cavalier attitude to the criminal laws of the UK ... Indeed it is clear from the oral evidence that the Appellant has not notified her employers of the immigration appeal hearing she has secured a character reference letter from her employer which makes no reference to her criminal past and who has been given the false impression that the letter was required as a character statement for alternative employment. I find that this further demonstrates the extent to which the Appellant is prepared to deceive and mislead others ... I find that the Appellant has

committed offences of dishonesty over a prolonged period with repeated use of an alias she has committed other allied offences and has done so whilst as a visitor in the United Kingdom, the host country I find that she has also shown a willingness to deceive her current employers recently in relation to the reference letter produced before the tribunal'.

On the evidence before me she clearly went on to deceive yet another employer following the hearing in 2014.

24. She attempted to explain her behaviour by claiming that in doing so, and receiving a benefit by deception, she avoided claiming state benefits which would have been paid out of the national funds. This however entirely misses the point that she has committed further acts of dishonesty without any apparent aptitude to change her ways. She added when giving her evidence that she always challenged the decisions of the Respondent and the tribunal, presumably in relation to fact-finding and other matters, to enable her to remain longer in the United Kingdom or she put it 'to regularise her stay.'
25. In 2014 Judge Greasley found at paragraphs 32 and 33 the following:

'I also find that the appeals must be dismissed in relation to article 8 family and private life in relation to both Appellants. I accept that the Appellant and her daughter have established private life interest in the United Kingdom during their residence ... Equally I find that both Appellants can both return together to Nigeria and resume their private life interests there.'
26. Apart from the passage of time there is no evidence before me to reach a different conclusion.
27. During his oral submissions, Mr Alagh reminded me of the conclusions in **EV (Philippines) v SSHD [2014] EWCA Civ 874**. I have considered the second Appellant's best interests without reference to the immigration status of her mother and indeed her father who remains in the USA. I have found that there would be no substantial impact on her educational development, progress and opportunities of the future.
28. Mr Read during his submissions argued that paragraph 276 ADE(1)(vi) should be found in that it would not reasonable to expect the second Appellant to leave the UK. I do not find that to be the case for reasons found above.
29. Mr Read also submitted that in considering section 117B which I am obliged to do in consideration of all Article 8 appeals, particular focus is required on section 117B (6).
30. In dealing with the broader issues in section 117B, the maintenance of effective immigration controls is in the public interest. Both the Appellants speak English. I have received oral evidence, but nothing more that is substantially credible, from the first Appellant; that she receives money from family and friends. Although she is not financially independent she has stated in evidence that she is not a burden on taxpayers. Little weight should be given to a private life established by a person at a time when the

person's immigration status is precarious. I accept that little weight does not mean no weight.

31. Section 117B(6) has been the subject of substantial judicial consideration since Judge Greasley's determination. In **AM Pakistan and others v SSHD [2017] EWCA Civ 180** the question of reasonableness was considered at length. In this appeal I accept that the second Appellant is a qualifying child who satisfies the seven-year rule and the first Appellant has a genuine and subsisting parental relationship with her. I do find for the reasons above that it is reasonable to require the second Appellant to leave the UK. Although it may have been argued that it is in the second Appellant's best interests to remain in the UK, for the reasons found by Judge Greasley that was not the conclusion he reached, which was open to him and not criticised on appeal. In the absence of any new evidence of substance to suggest otherwise I reach the same conclusion as Judge Greasley. For these reasons I dismiss the appeals."
8. There was an application for permission to appeal and permission was granted by the Upper Tribunal on 19 September 2018. It was found to be arguable that the judge had provided insufficient reasons on the issues of the best interests of the second appellant and reasonableness of return as the facts were similar to those in **MT and ET (Nigeria) [2018] UKUT 00088 (IAC)**. Reference was also made to **MA (Pakistan) [2016] EWCA Civ 705** - significant weight should be given to the fact that the appellant had been in the United Kingdom for over seven years.
9. Ms Pal submitted that the judge had been correct to take into account the findings made by Judge Greasley. He had referred in paragraph 25 to Judge Greasley's conclusion that both appellants could return together to Nigeria and resume their private life interests there. He had made it clear that he had considered the child's best interests without reference to the immigration status of her mother in paragraph 27 of his decision. He had referred to **AM (Pakistan)** in paragraph 31 of his decision. He had concluded that it was reasonable to require the second appellant to leave the UK. Ms Pal referred to the decision of the Supreme Court in **KO (Nigeria) and Others [2018] UKSC 53**. While the status of the mother had an indirect impact on the appellant he had correctly focussed on the best interests of the child who would leave with her parents. There was no material error of law in the decision.
10. At the conclusion of the submissions I reserved my decision. I can of course only interfere with the decision of the First-tier Judge if it was flawed in law.
11. Ms Pal referred to the recent decision of the Supreme Court in **KO (Nigeria)**. While the sins of the parents should not be visited upon the children "the record of the parents may become indirectly material" as is pointed out in paragraph 18 of the judgment. In this case the behaviour of the appellant's mother is of course deplorable and it is summarised in the judge's conclusions which I have set out above. As the judge noted there was no credible evidence that the first appellant was a reformed person. However it is important to note that at the conclusion of paragraph 21 the judge discounted any of the criminal behaviour of the first named

appellant in his consideration when concluding that the child's best interests would be maintained by being accompanied by her mother to Nigeria.

12. The judge in my view did not err in his consideration of the case in the light of the authorities then available and his decision would have been no different had he had the benefit of the recent Supreme Court decision. He explored exhaustively the issue of the best interests of the child noting, for example, her ability to adapt during her mother's recent imprisonment. In paragraph 27 the judge refers to his finding that there will be no substantial impact on her educational development, progress and opportunities. He confirmed that he had considered the child's interests without reference to the immigration status of her mother. The case referred to in the grant of permission was decided before the recent Supreme Court case. The Tribunal in **MT and ET** refers to the "present state of the law" in paragraph 33 of its decision. It is very doubtful that the Tribunal in the case of **MT** would have described the behaviour of the first appellant in the instant case as being that of a "somewhat run of the mill immigration offender...". As the Supreme Court makes clear the record of the first appellant becomes indirectly material and one needs to focus on the position "in the real world" - see the extract from **EV (Philippines) v Secretary of State** referred to in paragraph 19 of the decision of the Supreme Court.
13. For the reasons I have given I am not satisfied that the decision of the First-tier Judge was materially flawed in law. This appeal is dismissed. The decision of the First-tier Judge shall stand. It is appropriate to make an anonymity order in this case.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed

Date: 26 November 2018

G Warr, Judge of the Upper Tribunal