



IAC-FH-CK-V1

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

Appeal Number: PA/09453/2019 (P)

THE IMMIGRATION ACTS

**Heard at Manchester
On 10 August 2020**

**Decision & Reasons Promulgated
On 19 August 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

**AOO
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Adewusi from Crown and Law Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS (P)

This has been a remote hearing which had been consented to by the parties. The form of remote hearing was video by Skype (v). A face-to-face hearing was not held because it was not practicable and all the issues could be determined in a remote hearing. The order made is as described at the end of these reasons.

The appellant, who is a Nigerian national born on 20 September 1982, with dependants comprising his wife and two children, has appealed to the Upper Tribunal with permission against a decision of the First-tier Tribunal promulgated on 7 February 2020, dismissing on all grounds his appeal against a decision of the Secretary of State dated 19 September 2019 to refuse his claim for international protection and human rights.

At the First-tier Tribunal appeal hearing the appellant's representative abandoned the international protection element of the claim, namely asylum and humanitarian protection. Reliance was placed only on the appeal against the refusal of leave to remain under Appendix FM, paragraph 276ADE, and Article 8 outside the Immigration Rules.

The essence of the appellant's factual claim was that he feared return to Nigeria as a Christian whose life had been threatened by Islamic extremists. In addition, the appellant claimed to have been threatened by his own family, who were unhappy with his choice of wife, and it is said that his mother caused problems with his wife's pregnancy by practising voodoo against her.

The judge entirely rejected the appellant's core factual account, finding he was not of adverse interest to Islamic extremists and not at risk from his family.

The judge then went on to consider the family life arguments. The judge accepted that one of the children, R, was a "qualifying child", and addressed whether it would be reasonable to expect that child to leave the UK pursuant to Section 117B(6) and 276ADE(1)(iv). At paragraph 26 the judge applied KO (Nigeria) [2018] UKSC 53 leaving out of account the immigration history of the parents, to assess reasonableness on the basis of the facts as they are in the real world. The parents had no right to remain. Their asylum and humanitarian claims had been abandoned and their core factual account disbelieved. Even though R was born in the UK in September of 2012 and had therefore lived here in excess of the seven year threshold, taking account of the best interests, the judge concluded for the reasons set out in the decision that it would be reasonable to expect the child R to follow the rest of the family to Nigeria. In that assessment the judge followed the Appendix FM guidance setting out the findings under headings of the relevant factors. The judge then considered Article 8 ECHR outside the Rules but concluded that there were no compelling circumstances sufficient to justify granting leave to remain outside the Rules. It is clear that the judge also took into account the best interests of the children pursuant to Section 55.

I have carefully considered the decision of the First-tier Tribunal in the light of the grounds of application for permission to appeal and the oral submissions made to me in the remote hearing.

The grounds submit that the First-tier Tribunal Judge erred in law in assessing the best interests of the children, in particular that of the eldest child and qualifying child. Reliance is placed on MA (Pakistan) & Ors v Upper Tribunal (IAC) & Anor [2016] EWCA Civ 705, to the effect that the fact that a child has been in the UK for seven years would need to be given significant weight in the

proportionality balancing exercise and that the starting point is that leave should be granted unless there are powerful reasons to the contrary.

Reliance is also placed on the allegedly serious medical condition of the second child, E, who suffers from autism, which it is argued is not treatable or supported in Nigeria. In this regard, the grounds suggest that because autism was not mentioned in the Home Office's medical information on treatable conditions in Nigeria this implied that autism was not treatable in Nigeria and therefore the child met the requirements of very significant obstacles to integration under paragraph 276ADE. It is, therefore, argued that it would be impossible for the family to reintegrate in Nigeria.

Curiously, the judge granting permission did not give any reasons for granting permission, simply stating that the grounds may be argued.

As drafted I find the grounds are largely a disagreement with the decision and an attempt to reargue the appeal. It is argued that the judge erred in law "by deciding that the children are to be removed from the UK, despite the child qualification under the Rules." However, the grounds ignore that the Supreme Court has held that this reasonableness assessment has to be made in the real world context. In this case, as stated above, the parents had no independent right to remain. Their claim to remain rested entirely on R as a qualifying child and to some extent the autism support needs of another child, E. The judge provided cogent reasons for concluding that it would be in the children's best interests pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009 and reasonable to expect both children to return to Nigeria with their parents. All the factors relied on in the grounds were addressed by the judge in the decision.

In relation to the medical needs of the child E, Mr Adewusi submitted that there was no evidence before the Tribunal that the child's autism needs could be treated in Nigeria. On the other hand, Mr McVeety pointed me to paragraphs 151 to 154 of the decision where the respondent specifically considered the claim in respect of the child's medical conditions and specifically referred to autism. Information is given at paragraph 153 of an NGO, the Nigerian Autistic Society. At paragraph 153 it is said that there are also awareness programmes to raise awareness of autism within Nigeria, and at paragraph 154 that external information confirmed there was a certified autism centre in Nigeria called Patrick Speech and Language, which is an educational facility for people with autism which has subsidised fees available for parents, allowing easier access to the facility. Mr Adewusi failed to engage with the argument that it was for the appellant to demonstrate that there would be very significant obstacles to integration. It was for the appellant to demonstrate that the child E could not be adequately treated in Nigeria. It was not for the respondent to prove that he could even though the respondent has outlined evidence in the refusal decision suggesting that there is such treatment. It is clear that the appellant failed to discharge the burden in respect of treatment for the child E.

Mr Adewusi also failed to acknowledge the decision of the Supreme Court in KO (Nigeria). As stated above, this held that the assessment of reasonableness

has to be made in the real world context. Mr Adewusi relied entirely on MA, which held that a qualifying child's best interests could only be displaced by strong reasons. Mr Adewusi is not up-to-date in the legal authorities he has cited and, as Mr McVeety pointed out, it is not the case that a child who suddenly reaches the age of 7 is automatically entitled to win an appeal. The matter has to be considered in the context of the rest of the family and any other claims for leave to remain. I am satisfied that the judge did consider the matter in the context of the correct factors and reached a decision which was sustainable on the available evidence and adequately reasoned. It follows that none of the grounds of appeal are made out. The child E failed in the argument that there were very significant obstacles to integration and the child R failed on the basis of being a qualifying child, the judge having found it reasonable to expect that child to accompany the parents to Nigeria. The judge set out all the factors that would support integration of that child and the family in Nigeria. It was open to the judge to reach those conclusions and the findings are cogently reasoned.

In the premises I find no error of law in the decision of the First-tier Tribunal.

Decision

The decision of the First-tier Tribunal did not involve the making of an error of law.

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appellant's appeal remains dismissed on all grounds.

I make no order for costs.

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 his 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.

Signed DMW Pickup

Upper Tribunal Judge Pickup

Dated 13 August 2020