



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/31761/2013,
IA/41645/2013 & IA/31773/2013

THE IMMIGRATION ACTS

Heard at Stoke on Trent
On 13 October 2014

Determination Promulgated
On 21 October 2014

Before

Deputy Upper Tribunal Judge Pickup
Between

Oluwayemisi Adebola Matthew-Okoromi
Matthew Erumusele Okoromi
Emmanuella Moyinaluwa Matthew-Okoromi
[Anonymity direction not made]

Appellants

and

Secretary for the Home Department

Respondent

Representation:

For the appellants: Mrs M Izevbizua, instructed by Leslie Charles Solicitors
For the respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, Oluwayemisi Adebola Matthew-Okoromi, her husband, Matthew Erumusele Okoromi, and their child Emmanuella Moyinoluwa Matthew-Okoromi, date of birth 3.12.07, are citizens of Nigeria.

2. These are their linked appeals against the determination of First-tier Tribunal Judge Garratt, promulgated on 10.2.14, dismissing their appeals against the decisions of the respondent to refuse their applications made on 11.5.12 for leave to remain in the United Kingdom on human rights grounds. The Judge heard the appeal on 28.1.14.
3. First-tier Tribunal Judge Keane granted permission to appeal on 3.3.14.
4. Thus the matter came before me on 13.10.14 as an appeal in the Upper Tribunal.

Error of Law

5. 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 determination of Judge Garratt should be set aside.
6. The relevant background is that the first appellant came to the UK as a student in 2007. She was married to the second appellant in Nigeria in 2005 and they have two children from their relationship, the third appellant was born in the UK in 2007. Sadly, they lost a second child. However, their third child was born in the UK on 18.9.12. The first and second appellants lived together in Nigeria before she came to the UK. She continues to have close relatives including her mother and four siblings. The second appellant also has family in Nigeria. There have been visits to and from the relatives in Nigeria. Unusually, the second appellant had obtained employment in Nigeria some two years earlier to the First-tier Tribunal hearing and he continues to work there, returning to the UK to visit his family during his vacation time. He had last returned from Nigeria on 24.1.14, having been there since 28.9.13, and was due to return to work in Nigeria on 9.2.14, living in the same rented home he had shared there with the first appellant before she came to the UK. Although he continued with his employment he feared fall-out from a proposed prosecution of the directors of his employing company, MTN.
7. The applications were made outside the Immigration Rules on human rights grounds.
8. Judge Garratt found that there was no real risk of serious harm under article 8. The judge then proceeded to consider article 8, including the best interests of the two children, finding that their best interests were to be with their parents, whether in the UK or in Nigeria, with their immediate and extended family. The judge considered the private and family life of the two adult appellants, as well as the private and family life of the child appellant and the other child. The judge found no compelling circumstances insufficiently recognised under the Immigration Rules such as to justify granting leave to remain on the basis of article 8 ECHR outside the Rules. The judge found nothing to prevent relocation of the family to Nigeria. Finally, the judge went on to consider article 8 under the well-known 5 Razgar steps, concluding that the decision of the Secretary of State was not disproportionate.
9. The grounds content that the First-tier Tribunal Judge made a material error of law in failing to consider article 8 ECHR outside the Rules. However, it is clear that the

judge did in fact conduct a careful article 8 assessment outside the Immigration Rules. I thus find no merit in that ground of appeal. Neither can I find that the judge failed to take into account any material factors or evidence relating to article 8 private and family life considerations.

10. The primary ground of appeal is that the judge made a material error of law by applying the 'beyond reasonable doubt' standard of proof, rather than the balance of probabilities. At §28 the judge stated, "As to the evidence I apply the standard of proof beyond reasonable doubt and look at the facts as at the date of the hearing."
11. In granting permission to appeal, Judge Keane observed, "Although the judge in the final sentence of paragraph 31 of his determination explicitly applied the real risk standard of proof in finding that the appellants would not be exposed to a risk of harm contrary to Article 3 of the Human Rights Convention upon their return to Nigeria, given the judge's reference to the beyond reasonable doubt standard of proof it is arguable that he had in mind a higher standard of proof than that applicable and arguably his findings as to the risk which the appellants faced upon a return to Nigeria were in error. The applications for permission are granted."
12. The Rule 24 response asserts that whilst the judge at §28 "mentions 'beyond reasonable doubt' it is clear from the findings made he has used (the) correct standard being the balance of probabilities." It is further submitted in respect of the other grounds that the judge gave full and cogent reasons for rejecting the article 3 claim and properly considered the article 8 claim, including the best interests of the child, finding that there are no compelling reasons why it should be considered outside the Rules. However, for good order sake went on to consider the 5 step Razgar test, finding the decision of the Secretary of State proportionate. "Despite the apparent slip of the judge's pen at paragraph 28 it will be submitted that the decision does not reveal a material error of law."
13. It is important to point out that in this case the essential and background facts were not in dispute; the judge's task was to apply the correct law to those facts. There was no requirement therefore for the judge to decide between competing assertions as to the factual background, as there often may be in other cases. This is highly relevant to the issue as the error of standard of proof.
14. There is no doubt that at §28 the judge stated that he intended to apply the 'beyond reasonable doubt' standard of proof. However, I find that it is clear and beyond doubt from the determination read as a whole that the judge applied the correct standard of proof and did not seek to be persuaded beyond reasonable doubt. For example at §31, when reaching his conclusion on the claim under article 3, the judge stated, "I am not satisfied that the appellants have shown that there is a real risk of suffering the serious harm proscribed by Article 3 if they return to Nigeria to live." The judge had already recited the claim of the second appellant that he was involved in a legal dispute that put he and his family "at real risk of serious harm of the kind set out in Article 3 of the Human Rights Convention. For the reasons which follow I do not accept that such a risk exists."

15. Similarly, in relation to article 8, it is clear that the judge considered and took into account the best interests of the two children of the adult appellants and reached the conclusion that the decisions of the Secretary of State were not disproportionate to the rights of the appellants.
16. I find that the appellants are in essence seeking to take advantage of an obvious clerical slip by the judge when stating the burden and standard of proof. If one took out §28 from the determination there is nothing within the balance of the determination to suggest that the judge was applying the wrong standard of proof at any stage. The background facts not being in dispute, the appellants have been unable to point to any finding of fact which should have been resolved differently, or to which it could be said the judge may have applied too high a standard of proof.
17. In the circumstances, whilst the slip referred to in relation to the standard of proof could have been fatal to the determination, on the facts of this case and on a careful reading of the determination it is abundantly clear that when it came down to applying the correct standard of proof, the judge did so.
18. For all the reasons stated, I find that there is no material error in the decision of the First-tier Tribunal.

Conclusions:

19. For the reasons set out above, I find that 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 of each appellant remains dismissed.



Signed:

Date: 16 October 2014

Deputy Upper Tribunal Judge Pickup

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 made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. However,

no submissions were made in respect of anonymity. I see no basis for continuing the anonymity order.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal remain dismissed.



Signed:

Date: 16 October 2014

Deputy Upper Tribunal Judge Pickup