



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

Appeal Number: IA/15712/2014

THE IMMIGRATION ACTS

Heard at Field House

On 24 June 2015

**Decision &
Promulgated
On 2 July 2015**

Reasons

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**TO
(ANONYMITY ORDER MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Waithe, Counsel instructed by Greenland Lawyers LLP

For the Respondent: Ms A Holmes, Home Office Presenting Officer

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269 as amended) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant or her children. For the avoidance of doubt, this order also applies to the appellant and the respondent. Failure to comply with this order could lead to contempt of court proceedings.

DECISION AND REASONS

1. The appellant is a citizen of Nigeria and her date of birth is 9 September 1978. She made an application for further leave to remain in the UK and this application was refused by the Secretary of State in a decision of 17 March 2014. The appellant appealed against this decision and her appeal was allowed by Judge of the First-tier Tribunal Hunter. In a decision of 15 April 2015 I set aside the decision of Judge Hunter having found an error of law in the determination. The error of law decision reads as follows:-
 - “14. The judge’s findings are inadequate in relation to the relatives that the appellant has in Nigeria. There is no clear finding about the appellant’s parents and this was a key area of conflict. In addition the judge having found that there was a person in Nigeria whom the appellant considered a sister does not attach due weight to this when considering best interests and proportionality.
 15. The judge’s decision in relation to the eldest child’s best interests is not grounded in the evidence. The appellant’s witness statement on the issue is lacking in detail. She refers to her eldest child at [7] and [8] and asserts that there is ‘absolutely no hope for my children in Nigeria. I do not have any ties to Nigeria’. There was documentation submitted in relation to M’s education which showed that she was doing well at school and that she participated in certain activities, but it was not evidence which established that her best interests were to remain here. M had been in the UK continuously for nearly seven years at the date of the hearing before the First-tier Tribunal; however it is a fact that this was the first seven years of her life and both children are young. In relation to the likely circumstances of the family on return to Nigeria, the judge did not consider this in the context of his findings (the judge found that the appellant had worked in the UK and that she attended catering college in Nigeria, there was at least one surviving relative in Nigeria). For the above reasons the proportionality assessment was flawed and the decision to allow the appeal under Article 8 is set aside.”
2. The matter was adjourned for reasons explained in paragraph 16 of my decision of 15 April 2015 and I made directions.

The Evidence and the Hearing

3. At the hearing before me the appellant gave evidence. She relied on the bundle that was before the First-tier Tribunal and further documents were submitted at the hearing. This evidence was not served in compliance with the directions of the Upper Tribunal. Ms Holmes did not object to the admissibility of the documents.
4. The documents submitted at the hearing are a letter from Minet Green Health Practice relating to the appellant. It is a document dated 28 April 2015 and confirms that the appellant was prescribed medication for depression. There are two death certificates, one relating to the appellant’s mother and the other to her father and a letter from the appellant’s eldest daughter’s teacher and head teacher. There is a letter from Rosemary Mallett of 20 April 2015 who is the parish priest of St. John

Angell Town which indicates that the appellant and her family are members of the church there

5. At the hearing before me Ms Holmes submitted the case of Zoumbas v SSHD [2013] UKSC 74. Mr Waithe submitted; Jakupovic v Austria (Application No.36757/97, Boultif v Switzerland [2001] 33EHRR 50 and Yildiz v Austria [2003] 36EHRR 32.

The Appellant's Evidence

6. The appellant's evidence is set out in Judge Hunter's determination between paragraphs 36 and 56. There is no reason to go behind the record of evidence which was not challenged by the respondent. The appellant had made a witness statement dated 23 October 2014 and she gave further oral evidence before me. Her evidence can be summarised.
7. The appellant came to the UK in 2002. She was brought to the UK as a domestic worker and later forced into prostitution. She has two children who were both born in the UK. Her eldest daughter, MA was born on 17 January 2008 and her son, TS was born on 12 February 2014. She has no contact with the children's fathers. MA is attending school where she is well-settled and making good progress. Both children speak English and do not speak their mother's first language.
8. The appellant does not have any ties to Nigeria. She has no family there who would be able to take care of her. Her parents are deceased. She has a non-biological sister who was raised by the appellant's parents within the family unit, but she does not have contact with her and does not know where she is. She would be able to struggle on her own in Nigeria, but not with her children. She would have no one to take care of her. Her children have never visited Nigeria and they do not speak the language. They speak English only.
9. The appellant lived with her parents in Nigeria before coming to the UK. Her parents are deceased. She has not been in contact with her non-biological sister since 2002.
10. The appellant attended a catering school in Nigeria for three years. She worked in the UK as a parking attendant for two to three years but had to give this up on account of having no legal status here.
11. She has obtained her parents' death certificates. They arrived three days after the hearing before the First-tier Tribunal. Before coming to the UK the appellant was living with her parents. She knew someone in the UK who was travelling to Nigeria and they made contact with her parents' pastor who was able to obtain the death certificates.
12. The appellant had a friend on Facebook in Nigeria but she is no longer in contact with her because she wanted the appellant to financially help her and the appellant was unable to do so.

13. The appellant in the UK is supported by the local authority and the charity, Kids Company. She is in temporary accommodation. Her daughter's school helps feed the family. She was previously supported by friends and her father's godson; however they are no longer able to support her.

Findings and Reasons

14. My starting point are the findings of the First-tier Tribunal which have not been challenged. The judge having heard oral evidence found that the appellant entered the UK illegally in 2002 or 2003. The judge stated that he had "difficulties with the credibility of the appellant's evidence" because of inconsistencies in her evidence and the correspondence from solicitors. The judge found that the appellant, despite her evidence, had been working here in the UK in order to pay a significant percentage of her bills rather than being dependent on her godson and friends as she asserted in evidence. The judge went on to find that various contradictions in the appellant's evidence damage her credibility and he did not find that she had been trafficked into the UK and forced into prostitution.
15. The appellant has two criminal convictions for theft, one in 2005 and one in 2010 and these were not disclosed in her application form. The appellant's explanation was that having received advice from the friend she considered that having paid fines the matters were at an end and she did not need to disclose them. The judge accepted that there may have been some confusion, but he found it difficult to accept that she would not have sought advice on the disclosure of the previous convictions. The judge accepted that the non-disclosure may have been as a result of a misunderstanding on the appellant's part. There is no reason for me to go behind this.
16. The judge found that the appellant does have someone in Nigeria whom she regards as a sister and that she has friends on Facebook.
17. Considering the appellant's overall credibility I find that she has not established, on the balance of probabilities, that she does not have friends or family in Nigeria. She has produced two death certificates relating to her parents; however, there was no reasonable explanation given why the documentation was not produced at the hearing before the First-tier Tribunal. I note from the determination that the appellant's evidence at that hearing was that she had not requested their death certificate and her lawyers had not asked for them. At the hearing before me she stated that the death certificates had been received three days after the hearing. The appellant's evidence about how she came into possession of the certificates was ambiguous. She stated that someone had travelled to Nigeria and made contact with her parents' pastor. This in my view would suggest that she is in contact with friends or indeed family members who live in Nigeria who has assisted her to obtain the certificates.

18. Even if the appellant's parents are deceased, it is my view that she has friends or family there who are able to at least offer her some support. I did not accept her evidence in relation to her non-biological sister. Her evidence before me was that she has not been in contact with her since 2002. This was not advanced at the hearing before the First-tier Tribunal. Before me her evidence was that there had been a "fall out" between her family and the non-biological sister, but again this had not previously been advanced. In my view the appellant sought to embellish her evidence.
19. According to the respondent the appellant applied for an emergency travel certificate on 17 June 2010 in order to travel to Nigeria. She completed a form indicating that she has a mother and her sister in Nigeria. However, her evidence to me was that her sister was her non-biological sister and she has not been in contact with her since 2002. In addition the death certificate that she provided at the hearing before me indicates that her mother died on 15 December 2008. The appellant's evidence about this is that she did not apply for a travel certificate and indeed this was accepted by the First-tier Tribunal. The judge found that it was unlikely that she would knowingly apply for a travel document in 2010 given her immigration position. The appellant's evidence is although she did not apply for a travel document she did complete a form as maintained by the respondent, but that this was because she had been told to do so by an Immigration Officer. Having considered the evidence in the round, I do not accept her explanation and find that she was in contact with her sister and that her mother was living in Nigeria. This significantly undermines the appellant's credibility. Considering the evidence in the round I find the death certificates produced by the appellant unreliable (see Tanveer Ahmed [2002] Imm AR 318).
20. The appellant is not able to meet the requirements of Appendix FM and it is not argued by Mr Waithe that she is able to. Mr Waithe did not submit that the appellant relied on article 8 within the rules and his submissions related to article 8 outside of the rules. In any event, I am satisfied that the appellant has ties to Nigeria. (Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 00060 (IAC)). At the time of the hearing before me the appellant's eldest daughter is aged 7 years and 5 months and I will consider reasonableness in the context of section 117 (B) (6). There is no need for a repeat assessment for the purpose of 276ADE (iv).
21. I must consider both of the children's best interests as a primary although not the primary consideration: ZH (Tanzania) v Secretary of State for the Home Department [2011] 2 AC 166.
22. The appellant's evidence in relation to her MA is that she is well-settled at school and has strong ties to the community. In the appellant's witness statement she also talks of extended family members. In the appellant's bundle there are letters from friends here in the UK in support of the appeal. These letters are brief and they do not shed light on either of the children's best interests. None of the authors attended the hearing either before me or before the First-tier Tribunal to give evidence.

23. There are documents from St. John's Angell Town C E Primary School relating to MA for the academic year 2012 and 2013 and these indicate that she is making progress at school. The up-to-date evidence from the school is a letter of 27 April 2015 from MA's class teacher, Mandy Walker and which is also signed by the Head teacher Martin Clarke. Ms Walker describes MA as a bright, helpful friendly child who has done well at school and has many friends. The letter goes on to say that the family are living in poverty and MA comes to school hungry and that she was distressed at Christmas time and on her birthday because she knew that she would not have the same experiences as the other children. Ms Walker describes her as wearing old, ill-fitting clothes to school. The school has done their best to support the family providing free breakfast and lunchtime leftovers. The school has also made cash gifts to the appellant. MA has always been happy and well-behaved but there have been changes in her behaviour over the past few months. She has become increasingly emotional and has attention seeking behaviours. She often talks about how worried she is about her mother and their situation. MA is extremely worried about her mother and that living in poverty and the risk of homelessness due to her mother's lack of ability to provide because she is not able to legally work here is having a massive detrimental effect on MA.
24. In Ms Walker's opinion the impact of a move to Nigeria would be very damaging for MA who does not speak the language and who has many friends in school and a bright educational future. She is a sensitive child and Ms Walker worries that moving away from the only country she has any experience and knowledge of would be extremely harmful to her.
25. MA is aged 7 and 5 months and she was born here and has lived here all her life. This is significant in terms of the Immigration Rules and primary legislation. It is a fact that she is doing well at school and there are problems in her behaviour as a result of the family's situation. The family lives in relative poverty here and is dependent on handouts and the state. The appellant's case is that the family would have no support in Nigeria but I do not accept this for the reasons that I have given. The appellant's evidence is not credible. There is at least some support there. It is reasonably likely that the appellant has friends and or family there. In addition the appellant attended college in Nigeria and gained qualification there. There is no evidence to support a finding that she would be able to support her family there.
26. The appellant has not established that she is able to support her family here in the UK even if she were allowed to work. She is able to survive here as a result of the help from the government and charity. She does not have family here despite her initial representations to the respondent claiming that she does.
27. The appellant's case was not presented on the basis that her children could not complete their education in Nigeria and in any event this would not be supported by the evidence before me. The children are relatively

young and there is no reason why they could not adapt to life there and the language. MA is not at a critical stage of her education.

28. There is very little evidence before me that MA has significant ties outside the family home and taking into account her age this is unlikely. They do not have family here and there is no evidence of significant friendships. The life that the family is leading here is one of relative poverty, dependency and uncertainty. The appellant is taking medication for depression and there is mention of the threat of homelessness in the letter from Dr James Easterway. There is no evidence that her mental health will deteriorate should she return to Nigeria.
29. I have taken into account Ms Walker's letter. I have no doubt that it has been written with the best intentions, but I am unable to accept the assertion made by her that the impact of a move to Nigeria would be very damaging to MA. I can only conclude that this assertion has been made on the basis that the appellant does not have any family, friends or support in Nigeria and this is evidence that do not accept. I do not accept that allowing the appellant and her family to remain here would improve their circumstances here or that in the event of removal to Nigeria the family circumstances would be any worse.
30. Having considered Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 00197(IAC) and Zoumbas [2013] UKSC 74, on the evidence before me I conclude that, on balance, it is in the children's best interests to return to Nigeria with their mother where I believe there is at least some family support. There is no family here. The children are young. The eldest child although having spent a significant period here, is still young and her life is very much centred on her home and family. She is not at a crucial stage of her education. The mere presence of the children in the UK, and their academic success, is not a "trump card" which their parents can deploy to demand immigration status for the whole family; Butt v Norway App 47017/09 4 December 2012, and EV (Philippines) and others v Secretary of State for the Home Department [2014] EWCA Civ 874.
31. The family has no right to be here. In my judgment the appellant's children are at an age where they could adapt to life in Nigeria particularly and that they have been raised by their Nigerian mother and the culture will be familiar to them. They would be able to adapt to life in Nigeria and overcome linguistic difficulties.
32. It is obvious that having regard to Regina v SSHD ex parte Razgar [2004] UKHL 27, the determinative issue is whether or not the decision is proportionate to the legitimate aim which in this case is the economic wellbeing of the country through the maintenance of immigration control. I must consider Article 8 through the prism of Section 117B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

33. The maintenance of effective control is in the public interest. It is in the public interest that a person who seeks to remain here is financially independent. The appellant is not financially independent and is a burden on taxpayers and dependent on charity. In relation to family life the family would be returning together to Nigeria and her case under Article 8 outside the Rules rests on private life. Little weight should be given to private life which has been established by a person when they have been in the UK unlawfully. There are many factors in this case which weigh against the appellant and weighty factors that weigh in favour of the respondent. The appellant's immigration history is appalling. Since she has been here she has been convicted of two criminal offences. She has been found lacking in credibility by the First-tier Tribunal and now the Upper Tribunal. I conclude that the decision to remove the appellant is proportionate and it is reasonable to expect MA to leave the UK with her family.
34. The appellant's application in this case was made on 14 February 2012 which is before the amendment to the Immigration Rules. The application was made outside the Immigration Rules and there is no suggestion that the appellant would have been able to meet the requirements of the Immigration Rules prior to 8 July 2012. In any event, the matter was not pursued by Mr Waithe. I have not referred to the case law submitted to me by Mr Waithe. He was unable to explain to me the relevance of the decisions to the appellant's case.
35. I have made an order for anonymity to protect the identity of the appellant's children.

Notice of Decision

36. The appeal is dismissed under the Immigration Rules.
37. The appeal is dismissed under Article 8.

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.

Signed Joanna McWilliam

Date 29 June 2015

Upper Tribunal Judge McWilliam