



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

Appeal Numbers: IA/23089/2014
IA/23094/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 September 2015**

**Decision & Reasons Promulgated
On 16 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**AO
MO
(ANONYMITY DIRECTION MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr R Khosla, Solicitor from D J Webb and Co Solicitors

For the Respondent: Mr S Whitwell, Senior Home Officer Presenting Officer

DECISION AND REASONS

Introduction

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellants. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. This direction

has been made in order to protect the Appellants from serious harm, having regard to the interests of justice and the principle of proportionality.

2. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge R L Walker (Judge Walker), promulgated on 10 February 2015, in which he dismissed the Appellants' appeals. The appeals were against the Respondent's decisions of 9 May 2014 to remove them from the United Kingdom by way of directions under paragraphs 8 to 10A of Schedule 2 to the Immigration Act 1971 (in respect of AO) and as the family member of such an illegal entrant (in respect of MO).
3. The Appellants are citizens of Nigeria. AO is the mother of MO. They were born on 7 September 1972 and 13 March 2006 respectively. After a somewhat protracted history of human rights applications from the Appellants and refusals by the Respondent, the latter finally issued an appealable decision on 14 May 2014. The accompanying decision letter considered the applications under Appendix FM to the Immigration Rules. Ultimately, it was concluded that it would not be unreasonable for MO to go to Nigeria, and that his mother could accompany him there. In respect of Paragraph 267ADE, it was again said that MO could reasonably be expected to live in Nigeria. AO retained ties to that country. Section 55 of the Borders, Citizenship and Immigration Act 2009 was considered, as were the existence of exceptional circumstance outside of the Rules. The applications were rejected.

The decision of Judge Walker

4. The appeals came before Judge Walker on 4 February 2015. He found that MO has mild language disorder and received therapy through a programme delivered by a Teaching Assistant at his school (paragraphs 30 and 37). Direct access with a speech therapist was not required and assistance could be obtained in Nigeria (paragraph 38). He accepted that removal to Nigeria would cause some disruption, but that MO was not at a critical stage of his education (paragraph 36). There was nothing to suggest that MO could not have an education in Nigeria (paragraphs 36 and 40). AO had close family ties in Nigeria, having her older daughter and other relatives there (paragraph 33). All told, Judge Walker found that it would be reasonable for MO to go to Nigeria and that AO could not satisfy Paragraph 276ADE herself. The appeals were therefore dismissed under the Rules. Section 55 of the 2009 Act was also considered.
5. Judge Walker considered the claims outside of the Rules. He found that there was no family life as between the Appellants and nephews and nieces of AO who lived in the United Kingdom (paragraph 44). He concluded that the Appellants' private lives would not be interfered with so as to engage Article 8 (paragraph 44). Finally, he stated that in the event that proportionality were to be assessed, removal would not breach Article 8 (paragraph 47).

The grounds of appeal and grant of permission

6. The grounds were four-fold. Ground 1 asserts that Judge Walker failed to give reasons for credibility points about how AO supported herself financially. Ground 2 asserts that “sweeping general statements” were made in respect of MO’s ability to adapt to life in Nigeria. Ground 3 is based on a lack of reasons for the finding that there was no family life with the nephews and nieces in the United Kingdom. Ground 5 takes issue with the alleged failure to conduct a full balancing exercise outside of the Rules.
7. Permission to appeal was granted by First-tier Tribunal Judge Brunnen on 10 April 2015. He did not limit his grant, but commented that only ground 3 appeared to have any merit.

The hearing before me

8. Mr Khosla relied on the grounds. Starting with ground 3, he submitted that there were no reasons from Judge Walker as to why family life did not exist. I directed him to the statements of AO and her niece, SW, in the Appellant’s bundle which was before the First-tier Tribunal. Mr Khosla submitted that this evidence was capable of amounting to family life (he was unable to assist with what had been said by way of oral evidence and I found the record of proceedings very difficult to decipher). Removal would have constituted an interference and a full balancing exercise could have made a difference to the outcome of the appeal. The unusual feature of the case was that the nephew and niece’s mother (AO’s sister) had died in 2011. Since then, despite living in different parts of the country, AO and MO had had a special relationship with them, with AO acting as a surrogate mother.
9. On ground 2 and the best interests of MO, Mr Khosla sought to widen the scope of the argument as stated in the original grounds. It was said that Judge Walker had misinterpreted the evidence on MO’s language therapy by concluding that no “direct” assistance from the therapist was necessary. Thus, a proper assessment of the best interests and the reasonableness of going to Nigeria had not been carried out. It was submitted that whilst the decision in Azimi-Moayed and Others [2013] UKUT 00197 (IAC) had been cited by Judge Walker, he had not applied it. For example, MO’s shyness in social settings had not been accounted for.
10. Finally, it was submitted that Judge Walker was wrong to have concluded that no interference was present in respect of Article 8 outside of the Rules. Mr Khosla had nothing to add in terms of the proportionality conclusion in paragraph 47.
11. Mr Whitwell relied on the rule 24 notice. There was no error in respect of the finding that no family life existed with the nephews and nieces. The

evidence before the judge was thin. If there was an error, it was immaterial given the evidence as a whole and the high threshold in Article 8 cases outside of the Rules: SS (Congo) [2015] EWCA Civ 387 was relied on in this regard. As to the best interests of MO, the grounds said nothing about the findings on the therapy issue. Judge Walker had properly directed himself in law and the Appellants were now just disagreeing. Outside of the Rules, the Razgar approach had been applied.

My decision on error of law

12. I find that there are no material errors of law in the decision of Judge Walker.
13. Taking the grounds and submissions in order, I find that there is nothing of substance in ground 1 and the challenge to credibility findings. In paragraph 29 all Judge Walker was saying is that AO's evidence on financial support was vague and "did not assist" her credibility. I do not see this as even being an adverse finding, as opposed to a neutral factor. Even if it is and even if it was poorly reasoned, it clearly had little or no bearing on Judge Walker's decision as a whole. Mr Khosla acknowledged that this was not a strong ground and he was right to do so.
14. Ground 2 is the challenge to Judge Walker's assessment of MO's best interests and, on a fair interpretation of the argument, the question of the reasonableness of removal to Nigeria. First, the ground itself was narrowly drafted and based on the assertion of perversity, a high hurdle to overcome in any appeal. The ground focuses on what are deemed to be irrational sweeping statements about a child's ability to adapt to a new country. In my view the challenge as framed in the grounds fails entirely. Judge Walker was entitled to take account of more generalised factors such as the not uncommon occurrence of families having to move home and/or school and make new friends, provided he also had full regard to the specific circumstances of MO as well. Given that successful Article 8 claims (within or without the Rules) are by their nature rare instances, matters that are relatively commonplace will be relevant to the overall assessment. In respect of the specific circumstances of MO, Judge Walker dealt with these more than adequately elsewhere in his decision (see below).
15. Mr Khosla sought to expand the scope of ground 2 at the hearing. The proposed expansion was on the subject of the therapy required by MO, something that had not even been alluded to in the grounds. There has been no written application to amend the grounds. Having considered the matter carefully, I conclude that Mr Khosla is not entitled to expand on the grounds in the manner sought.
16. Even if I were wrong to have limited him in this way, Judge Walker did not in fact misinterpret the evidence in any event. The evidence from Sarah Buckley Therapies Limited clearly states that MO's mild language disorder was being managed by way of "blocks of indirect therapy under the

guidance of [...] in combination with indirect advice and liaison throughout the year.” (page 6 of the Appellant’s bundle). In light of the evidence before him, Judge Walker was fully entitled to conclude that MO’s condition could be adequately managed in Nigeria by way of indirect therapy. He was also entitled to rely on the country information cited by the Respondent. There is no indication that the Appellants had adduced their own evidence to show that appropriate therapeutic provision was simply unavailable in Nigeria. There is no error in Judge Walker’s approach or conclusions.

17. Mr Khosla’s points about MO’s shyness and the cultural ties established during his time in the United Kingdom are also beyond the proper scope of the grounds. Again, even if they were to be entertained, they fail to disclose errors. Whilst any issue of shyness is not expressly mentioned by Judge Walker, I have been shown no evidence to suggest that this was a particular and very significant problem for MO. There is no error here, but even if there was, it could not be said to be material. As regards cultural ties, the judge was entitled to take account of the fact that MO has been brought up by his Nigerian mother (who also has a Nigerian partner). There was no evidence before Judge Walker to indicate that MO had been raised in an environment devoid of cultural ties to his Nigerian heritage.
18. Turning to ground 3. The finding in paragraph 44 that there was no family life between the Appellants and the nephews and nieces is reasoned only by way of the conclusion that the bonds, though close, were not beyond normal emotional ties. I am prepared to find that this was insufficient insofar as adequate reasoning is concerned. There is no indication that Judge Walker found the evidence before him on this issue to be unreliable and more was required when making this finding. The real question is whether the error is material.
19. I conclude that although the evidence was just about capable of establishing family life and/or more particularly an aspect of the Appellants’ private lives, the error identified in the previous paragraph is not material to the outcome of the decision on the Article 8 claims within or without the Rules. I find this to be so because the actual evidence before Judge Walker was, to say the least, sparse. There is a single, brief paragraph in AO’s witness statement at page 2 of the Appellant’s bundle. The evidence contained therein is in very general terms and certainly does not, on any rational view, in and of itself disclose the existence of ties so strong as to amount to either a significant factor against the reasonableness of MO being removed to Nigeria, or a “compelling circumstance” (adopting the words of the Court of Appeal at paragraph 33 of SS (Congo) in respect of cases considered outside of the Rules). The niece, SW, describes being “pretty close” to AO (page 3 of the bundle), but that is all. This added very little to what AO had said. In light of this and the accept facts that the Appellant’s stopped living with the nieces and nephews in 2008, that they lived many miles apart, and that all bar one of the other relations were adults at the time of the hearing, there was no basis upon which Judge Walker could have rationally concluded that the

relationship between the Appellants and the other family members would have rendered it unreasonable for MO to be removed (in respect of the requirements of the Rules) or tipped the balance in favour of the Appellants as regards their claims outside the Rules.

20. Turning finally to ground 4, although Judge Walker might have expressed himself more clearly in paragraph 47, and should have applied the mandatory factors in section 117B of the Nationality, Immigration and Asylum Act 2002, he was entitled to be brief, given his findings and the scope of the Rules as they applied to each Appellant. In particular, subsection 117B(6) would not have assisted the Appellants, in light of Judge Walker's sustainable conclusions on Appendix FM and Paragraph 276ADE. Any error here is clearly not material.

Decision

The Appellants' appeals are dismissed.

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

I do not set aside the decision of the First-tier Tribunal, and that decision stands.

Signed

Date: 15 September 2015

H B Norton-Taylor
Deputy Judge of the Upper Tribunal

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 15 September 2015

Judge H B Norton-Taylor
Deputy Judge of the Upper Tribunal