IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/35317/2014
IA/35405/2014
IA/35319/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4th December 2015	**On 8th January 2016**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MRS ESTHER OLUBUKOLA DADA
MISS REBECCA OLUFOYINSAYEMI DADA
MISS MARY OLUYOYINSOLAAYOMI DADA
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr O Jibowu, Counsel instructed by M.J. Solomon & Partners
For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant, with permission, against a Decision of First-tier Tribunal Judge Lucas that was promulgated on 25th March 2015. The first Appellant is a citizen of Nigeria born on 6th July 1978 who came to the UK as a visitor in November 2005. She very

shortly thereafter gave birth to her first child on 10th December 2005 and had a second child on 13th June 2009, so she now has two dependent children, the second and third Appellants. They are also citizens of Nigeria.

2. She twice, unsuccessfully, sought residence cards to remain as the spouse of an EEA national, in 2010 and November 2011. She has made four applications for leave to remain outside the Rules on human rights grounds. She applied in 2012, twice in 2013 and the present application, the subject of this appeal.

3. Permission to appeal the Decision was granted on the basis that it was arguable that the judge did not consider ZH (Tanzania) [2011] UKSC in the determination and the judge granting permission also noted that the judge failed to consider the impact of the 2014 Immigration Act, by which she must mean Section 117, which was in force at the time.

4. The Appellant relied on a report from a clinical psychologist. The representative before me argued that inadequate attention and weight were attached to that report. At paragraph 15 the judge quoted paragraph 71 of the report where the expert went as far as to state that in her opinion the best interests of the children were best served in the UK where they would have access to a good education, a good social network and family friends to whom they are close with whom they have regular contact. Moving to Nigeria, the expert opined, would disrupt the already developed system and this could significantly impact on their psychological wellbeing.

5. The judge's findings start at paragraph 26 of the judgment and at paragraph 30 the judge says that close attention has been paid to the expert report but given little weight, noting that it was totally dependent upon what was said by the Appellant of her asserted experiences in Nigeria; that it was hardly a dispassionate report since it was entirely based upon the words of the Appellant and the potential impact of return for the Appellant and her children was simply an attempt to influence and supplant the factual determination of this appeal by the Tribunal. The Judge noted that it is for the Tribunal to decide the facts of the case and not the expert. The public interest in the removal of individuals who enter the UK illegally and have since remained is not discussed in any meaningful sense at all in the report.

6. The judge goes on at paragraph 31 to say that little weight is placed on the Appellant's "traumatic" experiences in Nigeria because that claim had only emerged in the latest claim by the Appellant, despite her having been in the UK since 2005 and, as I have indicated above, making numerous previous applications to remain. The judge found that that was similarly an attempt to bolster her claim by adding additional factors as to why she should not return to Nigeria.

7. At paragraph 32 the judge notes that the Appellant is aged 37 but only left Nigeria aged 28 and thus spent most of her life there. So far as the ZH (Tanzania) point and the best interests of the children are concerned, the judge at paragraph 33 makes clear that he accepted and noted that children cannot be blamed for the actions of their parents. However, the best interests of the children must be examined both within and without the relevant Immigration Rules.

8. The judge goes on to note that the eldest child is now over the age of 9 and would potentially qualify under paragraph 276ADE. The judge recorded that the school reports indicated that the children were doing very well and there was no doubt that removal of this and the other child would be disruptive socially and in terms of their education. Again in this regard the judge gave little weight to the submitted expert report because what the report stated could have been written in relation to any child born in the UK who faced the prospect of removal and he found the report far from objective or helpful.

9. He then goes on to say that the simple fact is that both of the children could readjust to life in Nigeria. There is a functioning education system there. English is widely spoken. The fact that the education system and standard of living may not be the same as in the UK is not a decisive factor. Both of the children are healthy and will have the continuing support of their mother.

10. At paragraph 37 the judge indicates that notwithstanding Section 55 the public interest in removing individuals with no status or permission to be in the UK outweighs the best interests of those children particularly when the children can re-adapt to life in Nigeria. I am reinforced in the view that the judge has not erred by the two cases relied upon by the Presenting Officer before me, EV (Philippines) [2014] EWCA Civ 874 in which at paragraph 60 the Court of Appeal said:

> "In our case none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. If the parents are removed, then it is entirely reasonable to expect the children to go with them. As the Immigration Judge found it is obviously in their best interests to remain with their parents. Although it is of course a question of fact for the Tribunal I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world."

11. The other case relied upon in that regard by the Presenting Officer is AM (S.117B) Malawi [2015] UKUT 0260 (IAC) and at paragraph 39 of that judgment the Upper Tribunal stated that:

> "There was no reason to infer that any interruption to the education of the elder child upon return to Malawi would be any more significant than that faced by any child forced to move from one country to another by virtue of the careers of their parents. Nor should the difficulties of a move from one

> school to another become unduly exaggerated. It would be highly unusual for a child in the UK to complete the entirety of their education within one school. The trauma, or excitement, of a new school, new classmates and new teachers is an integral part of growing up. In too many appeals the Tribunal is presented with arguments whose basic premise is that to change a school is to submit a child to a cruel and unduly harsh experience. Indeed, as if to illustrate the point, we note that the eldest child of this family has been required to move schools, and move from one end of the UK to the other, as a result of the Decisions of her parents. The evidence does not suggest she suffered any hardship or ill effect from so doing."

12. The children in this case are healthy. There are no medical issues. They are neither of them in a critical stage in their education and, as the judge found, the education system is conducted in English in Nigeria. It is the country of their parents' nationality. They will be returning there with their mother and the judge was entitled to find that that was not unreasonable and also entitled to find that the public interest in removing individuals without leave outweighed any other interests in this case.

13. The other matter referred to by the judge who granted permission was that the First-tier had not considered Section 117. However, looking at Section 117B it could not have made any difference to the outcome of the hearing because the Appellant could not satisfy the requirements of the exception to that Rule for the same reasons. Section 117B states that the maintenance of effective immigration control is in the public interest, secondly that it is in the public interest, and in particular in the interests of the economic wellbeing of the United Kingdom, that persons who seek to enter or remain are able to speak English and also thirdly that they are financially independent so that they are not a burden on taxpayers and better able to integrate into society.

14. This Appellant is not financially independent. She is apparently dependent upon the charity of others and her children are being educated and presumably receive medical treatment at the expense of UK taxpayers. It also indicates that little weight should be given to a private life established when the person is in the UK unlawfully. That is the case so far as the mother is concerned.

15. The exception in Section 117B(6) indicates:

> "The public interest does not require the person's removal where –
>
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
>
> (b) it would not be reasonable to expect the child to leave the United Kingdom."

16. The judge has covered that in the reasoning and finding that it would be reasonable for the children to leave the United Kingdom and therefore a failure to refer in terms to Section 117B has made no difference to the outcome and is an error of form rather than substance.

17. For all of those reasons I find that the determination by the First-tier Tribunal is not tainted by material error of law and I uphold it. The appeal to the Upper Tribunal is dismissed.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

Signed Date 7th January 2016

Upper Tribunal Judge Martin