



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03707/2016
HU/03709/2016

THE IMMIGRATION ACTS

Heard at Field House
On 14 August 2017

Decision and Reasons Promulgated
On 15 August 2017

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

MOJISOLA GANIYAT AZEEZ
MOSHOO OLUKAYODE FOLORUNSO AZEEZ
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant in person
For the Respondent: Mr P Armstrong, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are mother and son born on 10 December 1965 and 13 October 1998 and nationals of Nigeria. They challenge the decision of First-tier Tribunal Judge Bart-Stewart to dismiss their article 8 appeals by way of a determination promulgated on 24 May 2017. Since the determination was promulgated, the second appellant has been granted leave to remain on the basis of having resided here for over 7 years. The challenge to the determination is therefore academic insofar as his immigration matter is concerned. However, there is no formal application to withdraw his case.
2. The first appellant arrived here as a visitor on 23 March 2007. Her visa expired on 4 April 2008 and she has since remained without authority. The second appellant entered on 9 September 2007 with his father. He also overstayed the

conditions of his leave. An application to remain on article 8 grounds was made on 17 November 2008. That was refused on 5 May 2009. Applications for the Secretary of State to reconsider her decision were made in December 2010, April 2013 and May 2014; all unsuccessfully. However, in April 2015 following the filing of a judicial review claim by the appellants, the respondent agreed to reconsider the claims and proposed a consent order. It appears that there was previous judicial review litigation which led to reconsideration in 2013 but a further refusal thereafter.

3. The judge considered the appeal under paragraph 276ADE, found that the second appellant had not been in the UK for half his life as at the date of the application or decision and that it would be reasonable for him to leave the UK. She considered his best interests and also considered the first appellant's circumstances and s.117B. She concluded that both appellants could return to Nigeria.
4. The appellants sought and obtained permission to appeal on 16 June 2017 on the basis that the judge had arguably erred in failing to consider that the second appellant met the requirements of the rules as at the date of the hearing and that he had been granted leave to remain. Judge Holmes also considered that arguably the judge should have assessed the article 8 claim on the basis that the second appellant was entitled to leave to remain.

The hearing

5. Both appellants attended the hearing before me on 14 August 2017, and I heard submissions from the first appellant and from Mr Armstrong. The appellant maintained that her son had been granted leave to remain. She submitted that he had lived here over half his life and that they lived together with her son relying on her financially and emotionally. She stated that her family life was outweighed by the public interest. She had served her sentence. It would be difficult to return to Nigeria as she had no family there. She then admitted she had a mother, a brother and a sister in Nigeria but maintained they could not help her. She did not have permission to work here but undertook some hair dressing work and sewing for which she was paid.
6. In response Mr Armstrong submitted that permission to appeal had been granted on post hearing evidence. The position at the date of the hearing was that the second appellant did not have leave to remain and the judge was entitled to assess the article 8 claim on the basis that he would leave the UK with his mother. The appellant had been an overstayer for some 9 ½ years and was working illegally. She had shown a propensity to deceive by using false documents. There was no evidence to show she could not return to Nigeria and it was open to her son to go with her. She had family in Nigeria and previous experience of running a business there. Her son had been educated at public expense and they had made use of NHS resources. The public interest required

her removal. The judge had applied the law correctly. Her determination was sustainable.

7. Mrs Azeez replied. She acknowledged that Mr Armstrong had made valid points but maintained that she could not return to Nigeria as she had nothing to return to.
8. At the conclusion of the hearing, I reserved my determination which I now give.

Conclusions

9. The challenge to the judge's determination has focused on her treatment of the second appellant's claim. The criticism of the first appellant's appeal only bites if the complaints about the second appellant are made out because it is not argued that the first appellant's appeal has merit other than parasitic reliance on her son's case. Indeed, the appellant herself at the hearing before me, acknowledged in her submissions that it was her son's case that was the stronger of the two.
10. The grant of leave to remain to the second appellant is a matter which occurred after the hearing and so cannot be used to undermine the judge's determination. I have seen no evidence that there was a pending application for leave on the basis of 276ADE(v) at the time of the hearing or that the judge was informed that such an application had been made (if it had). There is no reference to any such application or an intention to make one in any of the witness statements or supporting evidence that was submitted. Indeed, the judge suggested in her determination (at paragraph 26) that it was open to him to make an application if he did not wish to leave. The judge was, therefore, entitled to proceed on the basis that neither appellant had any basis to be in the UK. The only application before her was for a grant of leave on article 8 grounds, the refusal of which gave rise to this appeal.
11. The judge was plainly aware of the second appellant's age and length of residence and the relevance of this to 276ADE (iv). This is plain from paragraphs 1, 3, 6, 9, 14 and 19 where the matter is discussed. The judge applied the facts to the rules which require an applicant to have spent over half his life here *at the date of the application*. She correctly found that although he had been here more than seven years, he had not, at the date of the application leading to these proceedings, or even at the date of the decision of 25 January 2016, been here more than half his life although at the date the respondent agreed to reconsider the article 8 application, he had been here over 7 years. The judge took that date as being the date of the consent order of 24 May 2015, giving the second appellant generous extra time to qualify, albeit he could not. Correctly applying the rules, the judge concluded that the second appellant did not qualify under 276ADE either under sub section (iv) or (v).

12. In so far as the grounds rely on the respondent's policy that was not argued before the judge and a copy of the policy was not made available to her.
13. The judge considered the best interests of the second appellant noting his bright prospects with the possibility of university (and I note his many other talents such as his dancing abilities). She took account of relevant case law. She properly assessed the circumstances of both appellants. She did not accept that she had been told the truth about the appellants having no contact with their husband/father because the appellant had been dishonest in the past and had been evasive at the hearing when answering questions. She noted that the appellants had skills and that they had family in Nigeria. She had regard to the public interest factors of s.117B and was entitled to conclude that given the reasonableness of the second appellant's return, the poor immigration history of the first appellant, her deceit and dishonesty in the past, her conviction and the use of public resources, removal was proportionate. In view of the circumstances applicable at the date of the hearing, and notwithstanding the letters of support which speak well of the first appellant's upbringing of her son (something of which she should be very proud), the judge's approach was entirely open to her and no errors of law are apparent in her determination.
14. Given the change of circumstances since the hearing before the First-tier Tribunal, the appellants may have been better off making fresh representations to the Secretary of State rather than pursuing a challenge to this determination and may wish to seek legal advice on how best to proceed from here onwards.

Decision

15. The First-tier Tribunal did not make error of law and the determination stands. The appeals are dismissed.

Anonymity

16. There has been no request for an anonymity order and I see no reason to make one.

Signed



Upper Tribunal Judge
Date: 14 August 2017