



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/00025/2016

**THE IMMIGRATION ACTS**

Heard at : Field House  
On : 6 November 2017

Decision and Reasons Promulgated  
On: 10 November 2017

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

IHEKWUMERE NGENE  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr C Mannan, Counsel  
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Nigeria, born on 28 July 1970. He has been given permission to appeal against the decision of First-tier Tribunal Judge White dismissing his appeal against the respondent's decision to refuse his human rights claim.

2. The appellant entered the United Kingdom in September 2003 with leave to enter as a student and was subsequently granted further periods of leave to remain as a student until 31 October 2008. His wife, also a Nigerian national, joined him in the UK as his dependant on 15 January 2008. Their first child, Williams, was born here on 4 October 2008. Following an unsuccessful application for leave to remain, the appellant was granted leave to remain as a student until 31 October 2009 with his wife and child as his dependants. He made an unsuccessful application for further leave to remain as a student but then successfully applied for, and was granted, Tier 1 leave until 21 September 2012. A second child, Michelle, was born on 24 July 2010.

3. On 20 September 2012 the appellant applied, together with his wife and children, for leave to remain outside the immigration rules, but his application was rejected on 25 October 2012. Two further applications were refused on 30 August 2013 and 5 December 2013, by which time a third child, Nicole, had been born on 5 September 2013. The respondent agreed to reconsider the appellant's application following the threat of judicial review, but refused it again on 15 December 2015.

4. In refusing that application, the respondent considered that the appellant did not meet the eligibility requirements in paragraph R-LTRP.1.1(d) of Appendix FM as his partner was not British and was not settled in the UK. It was considered that he did not meet the eligibility requirements as a parent for the purposes of paragraph R-LTRPT.1.1(d) since, whilst his eldest child had been living in the UK for more than 7 years, it was not unreasonable to expect the children to return with him to Nigeria as a family unit. The respondent considered, in addition, that the appellant could not meet the criteria in paragraph 276ADE(1) on the basis of private life and that there were no exceptional circumstances justifying a grant of leave outside the immigration rules.

5. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge White on 19 April 2017, by which time the children were aged 8½, 6¾ and 3½. The judge recorded that it was accepted by the appellant's representative that the eldest child Williams had not been in the UK for 7 years at the date of the application and the appeal was therefore focussed on Article 8 outside the immigration rules and whether there were any compelling circumstances justifying a grant of leave outside the immigration rules. The judge found that it was in the best interests of the children to stay together and with their parents. In the case of the younger two, he considered that that could be in any country, but in the case of the eldest Williams he found that if his best interests were in remaining in the UK, it was only marginally. The judge concluded, however, that it was reasonable to expect Williams to leave the UK with the rest of his family and he found that the respondent's decision to remove the family to Nigeria was therefore proportionate. He accordingly dismissed the appeal on human rights grounds.

6. Permission to appeal to the Upper Tribunal was sought by the appellant on the grounds that the judge had failed to distinguish between the adults and the children, that there had been no separate consideration of the children under section 117B(1) - (5) of the Nationality, Immigration and Asylum Act 2002 and that there had been an error in the consideration of section 117B(6).

7. Permission was initially refused in the First-tier Tribunal, but was subsequently granted by the Upper Tribunal on the basis that the judge had arguably failed to attach significant weight to the qualifying child's length of residence in determining reasonableness pursuant to the guidance in MA (Pakistan) & Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor [2016] EWCA Civ 705.

### **Appeal Hearing**

8. At the hearing both parties made submissions.

9. Mr Mannan's submission was that the judge had given inadequate weight to factors which should have been accorded significant weight, namely the length of time the eldest child Williams had been in the UK and his integration into the UK in terms of language and education. The judge had erred by placing too much weight on the fact that the family would be kept together if removed to Nigeria.

10. Ms Pal submitted that the judge's approach was correct, that he took account of all relevant matters and that the matter of weight was for him to decide.

### **Consideration and findings**

11. I find no error of law in the judge's decision. The decision is in fact a detailed and careful one which addresses all relevant matters, correctly applies relevant caselaw and provides detailed and cogent reasoning. There is no merit in the suggestion that the judge erred by failing to follow the approach in MA. On the contrary, the judge's decision was entirely consistent with the approach set out in that case. The judge commenced, as he was supposed to do, by considering the best interests of the children. In so doing he had full and careful regard to the circumstances of all three children, including their education and level of integration into the UK and the fact that the eldest child had been in the UK for more than 7 years. His conclusion, set out at [19], was that the best interests of the children were to remain with their parents as a family unit and that that could be in any country in the case of the youngest two. In the case of the eldest child he concluded that his best interests marginally lay in remaining in the UK with his family. He explained why that was so and was fully and properly entitled to conclude as he did.

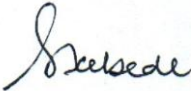
12. The grounds of challenge and Mr Mannan's submissions are that, given the eldest child's length of residence in the UK and level of integration, and given the finding as to his best interests, it was then for the respondent to demonstrate exceptional reasons as to why he should not be removed from the UK, which she had not done. It is suggested that that was the correct approach as set out in MA. However it seems to me that the judge followed what was the correct approach in MA, as he set out at [9], namely to consider the best interests of the children, in particular the eldest child, as a significantly weighty matter but to then go on and consider all other matters in assessing reasonableness, including the relevant public interest considerations. That is precisely what the judge did at [20] and [21]. He was perfectly entitled to consider the immigration history of the

appellant and his wife as part of the reasonableness assessment and to conclude that it was reasonable to expect the eldest child to leave the UK with his parents and return to Nigeria as a family unit. Such a conclusion was supported by detailed and cogent reasoning and was entirely open to the judge on the evidence before him. The judge was therefore entitled to conclude that section 117B(6) did not assist the appellant and, having again considered the family's circumstances in the UK and in Nigeria, to conclude that the respondent's decision was a proportionate one and did not breach the appellant's Article 8 human rights.

13. Accordingly the judge was entitled to dismiss the appeal on the basis that he did. I find no errors of law in his decision, which I uphold.

### **DECISION**

14. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed   
Upper Tribunal Judge Kebede

Dated: 6 November 2017