



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

Appeal Numbers:
IA/16659/2015
IA/17441/2015
IA/17443/2015
IA/17446/2015

THE IMMIGRATION ACTS

Heard at: Liverpool

Decision

&

Reasons

Promulgated

On: 16th August 2017

On: 18th August 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

The Secretary of State for the Home Department

Appellant

And

OH

EO

Master O

Miss H

(anonymity direction made)

Respondents

**For the Appellant: Mr Diwnycz, Senior Home Office Presenting
Officer**

**For the Respondents: Ms Mensah, Counsel instructed by Maya
Solicitors**

DECISION AND REASONS

1. The Respondents are all nationals of Nigeria. They are respectively a father, mother and two minor children. On the 16th December 2016 the First-tier Tribunal (Judge Buster Cox) allowed their linked appeals on Article 8 grounds. At the centre of his reasoning was the position of Master O (the Third Respondent), a child who has lived continuously in the United Kingdom for over 7 years, and who has been diagnosed with autism. Judge Cox did not consider it to be reasonable to expect that child to leave the UK and go to live in Nigeria and so, applying s117B(6) of the Nationality, Immigration and Asylum Act 2002 allowed the linked appeals.

2. The Secretary of State for the Home Department now has permission to appeal against that decision, granted by First-tier Tribunal Judge Pedro on the 25th May 2017. The grounds of appeal can be distilled as follows:
 - (i) That nowhere in the determination does the Judge consider whether there is treatment for autism in Nigeria, in particular “the wealth of information relating to medical treatment/support in Nigeria that is in the public domain”;
 - (ii) That the Judge “does not deal” with the evidence that the child was “quite low on the spectrum”;
 - (iii) That the Judge misdirected himself as to MA (Pakistan) and the “unduly harsh” criterion and in particular that he failed to consider the expense to the public purse in this family being allowed to remain. In that respect reliance is placed on EV (Phillippines);
 - (iv) The Judge failed to make findings on what the circumstances of the family might be if they were returned to Nigeria.

3. The appeal was opposed on all grounds by Ms Mensah.

Discussion and Findings

Ground (i): Treatment for Autism

4. As Ms Mensah made clear in her excellent submissions, this case had not been put on the basis of Article 3 ECHR. Nor was it argued that it

was an absence of care for autism itself which rendered the child's relocation to Nigeria unreasonable. Rather, the case rested on the uncontested evidence in the large bundle of country background material which indicated that a child with this condition would likely face significant social prejudice up to and including accusations of witchcraft being levelled against the family. Expert evidence from specialist NGO 'Stepping Stones' was produced detailing how such accusations can lead to significant harm for the child involved. That evidence was rightly given significant weight by the Tribunal. It was the evidence of social stigma that was considered of relevance. The evidence about 'treatment' was not particularly pertinent, particularly since there is in fact no 'treatment' available for autism.

5. Accordingly, I find that this ground has no merit at all. I would add this. The grounds of appeal complain that the Tribunal failed to take into account "the wealth of information relating to medical treatment/support in Nigeria that is in the public domain". Leave should never have been granted on this ground. It is unarguable. First, as I note above, there is no 'treatment' available to this child and as such the point is irrelevant. Secondly it is no part of a Judge's duty to go and find evidence that the parties themselves have not produced. The Secretary of State chose not to provide any background material on autism in Nigeria. She cannot expect the Judge to go and find it for himself, much less criticise him for a failure to do so. Had the Judge done so, it would plainly have been an error of law. I assume that the drafter of the grounds did not mean to suggest that the 'treatment' of children with autism in Nigeria was a matter of which judicial notice could have been taken.

Ground (ii): Evidence of Autism

6. I am unclear what the point being made is here. The grounds complain that the Tribunal failed to take into account evidence (before the Secretary of State) that this child was at the lower end of the spectrum and that his condition was improving. There was a very large bundle of material before the First-tier Tribunal concerning the current condition of Master O and the support that he receives in the UK. It came *inter alia* from a social worker attached to the family, from a senior nurse with long-standing involvement in Master O's care, a consultant community paediatrician, the SEN co-ordinator at his school, the manager of a specialist autism youth centre he attends, and from the family health visitor. The Tribunal also heard direct evidence from the child's parents about his current behaviour and how he was likely to be perceived by others. I am satisfied that the Tribunal had regard to the totality of that evidence. The determination acknowledges, for instance, the evidence from the SEN

co-ordinator at school that Master O is able to take part in educational activities such as maths and literacy, (albeit with a specialist support worker). It also notes the evidence that notwithstanding his ability to integrate to that extent he requires intensive support (*ibid*) and that he “struggles with social situations” (the manager of the specialist youth centre). Wherever the child was on the spectrum the point was that he would behave in a perceptibly different way to others and that it would be this that would expose him to the risk of discrimination, stigma and potential harm in Nigeria.

Ground (iii): ‘Unduly harsh?’

7. I need not address this ground in any detail save to record that Mr Diwnycz conceded it to be entirely misconceived. This was not a deportation and as such the test of undue harshness played no part in the Tribunal’s deliberations. I would add that EV Philippines [2014] EWCA Civ 874 was similarly of little relevance, relating as it did to a child with only four years’ residence. The child in this case was ‘qualifying’ and that was why the considerations in s117B(6) were engaged. Insofar as the grounds make specific reference to the burden that this family might place on the public purse, that is a matter expressly weighed in the balance at paragraphs 68 and 73 of the determination.

Ground (iv): Life in Nigeria

8. As is perhaps evident from the reasoning above, this was not going to be an issue that was of any particular weight in the determination of this appeal. The autism of Master O was the defining feature of the evidence, and the reasoning. I am not satisfied that any finding on whether his parents might be able to, for instance, find accommodation in Nigeria could have made any possible difference to the outcome.

Conclusions

9. The Judge’s starting point was that none of these individual appellants could meet the requirements of the immigration rules. Neither adult could hope to qualify under Appendix FM or 276ADE, and neither child had reached the ‘seven year’ mark at the date that the applications had been made: this meant that notwithstanding the position at the date of hearing, they had not met the requirements of paragraph 276ADE(1)(iv), which specifically requires the applicant to be a ‘qualifying child’ at the date of application [38]. What follows is that the Judge properly directs himself to relevant statute and caselaw

[40-42]; he has regard to the findings of an earlier Tribunal and justifiably directs himself that the earlier, negative, findings in respect of the adult witnesses was a matter to be taken into account in assessing their evidence before him [45]; the determination then embarks on a careful analysis of the evidence relating to Master O before reaching findings on 'best interests' [46-60], before finally weighing on the other side of the scales the countervailing factors such as the parents' poor credibility [69] their "blatant disregard for UK immigration laws" [71] and their failure to demonstrate financial independence [68]. I am not satisfied that the Secretary of State has even arguably established any error in approach.

Anonymity Order

10. This appeal concerns a claim for protection involving two minors. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

"Unless and until a tribunal or court directs otherwise, the Respondents are granted anonymity. No report of these proceedings shall directly or indirectly identify any of them, nor any member of their family. This direction applies to, amongst others, both the Appellant and the Respondents. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

11. The determination of the First-tier Tribunal contains no material error of law and it is upheld.
12. The Secretary of State for the Home Department's appeal is dismissed.
13. There is an order for anonymity.



Upper Tribunal Judge Bruce
15th August

2017