



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/10850/2017
HU/10856/2017
HU/10860/2017
HU/10862/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 23rd August 2018

Decisions Promulgated
On 4th October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

OGEECHI [I]
DONATUS [I]
[C I]
[O I]

(NO ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Patel, Counsel instructed by TM Fortis Solicitors Ltd
For the respondent: Ms Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The first appellant is the wife of the second appellant: the third and fourth appellants are their children. The children were born respectively on 1 September 2003 and 27 May 2005. They have a third child, [PI], born on the 23rd September 2009. She is not a party to these proceedings. All are nationals of Nigeria.
2. The first appellant came to the United Kingdom on 8 September 2009 as a student. Her husband and their then two children came as her dependents. Various other applications were made giving her leave until 3 April 2016. Before her leave expired she unsuccessfully applied under the entrepreneur scheme and review applications were unsuccessful.
3. On 10 November 2016 she applied for leave to remain on the basis of her family life. This was refused on 11 September 2017. The application was considered under the parent route of appendix FM. It was accepted she had children who had spent seven years in the United Kingdom. The respondent took the view that it would be reasonable to expect the children to return to Nigeria with their parents. Regard was had to private life under paragraph 276 ADE of the rules. She had not spent the necessary length of time here and the decision-maker felt the appellant could reintegrate. The decision maker took a similar line in relation to her husband. Regarding the children, reference was made to section 55 and the conclusion was again that they could integrate back into life in their home country.
4. The appeals were heard before Judge of the First Tier Tribunal O R Williams at Manchester on 16 February 2018. In a decision promulgated on 14 March 2018 they were dismissed.
5. The judge found that save for a break between 13 October 2016 and 10 November 2016 the appellants had been in the United Kingdom legally from arrival. The judge accepted the children were qualifying children within the meaning of the immigration rules. They were all extremely well settled here and the children had not returned to Nigeria since their arrival at the age of six and four respectively. All of the children were doing well at school with the eldest girl excelling. The judge referred to the 2015 Home Office guidance and acknowledged they have put down roots and integrated.
6. Against this, the judge found that the children could make new friends in Nigeria whilst continuing to remain in contact with their friends here. They had extended family members in Nigeria, including grandparents. Their parents had been educated in Nigeria to post degree level. The judge commented that the family had been able to adapt to moves within the United Kingdom. The first appellant had established a business here from which she could raise capital or continue to run remotely.

7. The judge concluded that the best interests of the children would be to remain with their parents and to return to Nigeria.
8. Regarding section 117 B the judge noted the adults speak English and are financially self-sufficient. The judge referred to the provision whereby private life formed against the precarious immigration status was to be given little weight. The judge also referred to the failure of the entrepreneurial application and stated that the maintenance of effective control was in the public interest. The judge concluded that the respondent's decision was proportionate.

The Upper Tribunal

9. Permission to appeal was granted on the basis that amongst other grounds it was arguable that the judge failed to give appropriate weight to the length of residence of the qualifying children or to give strong reasons why wider public interest considerations outweighed their interests. It was also argued that the judge was factually wrong in suggesting the children adapted to numerous changes in the United Kingdom. They had not moved to a succession of schools. They had attended primary school and then move to secondary school which would be the norm.
10. At hearing I was given a copy of the decision of the Court of Appeal in MA (Pakistan) & Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor [2016] EWCA Civ 705 and Upper Tribunal decision in MT and ET (Childs best interest; ex tempore pilot) Nigeria [2018] UKUT 88 as well as an extract from the respondent's guidance as of February 2018 in relation to children's best interests.
11. Having reflected upon the appeal I wish to express my gratitude to both representatives for the clear way in which they have both presented their respective positions. The issues have been clearly identified and fully addressed by the representatives.
12. The emphasis in the appeal is upon the position of the children. Ms Patel said that they are now aged 15, 13 and 9, the youngest child having been born here. The first appellant arrived in September 2009, with her husband arriving a month later. She stated that the judge was mistaken in stating the first appellant had returned to Nigeria in 2014. In fact she has never returned since arriving. There was also reference to some disharmony between the grandparents in relation to the issue of FGM.
13. Ms Patel emphasised the decision of MA (Pakistan) & Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor [2016] EWCA Civ 705. This is referred to by the judge at paragraph 6 of

the decision. I was referred to paragraphs 43 to 45 of the Court of Appeal decision. The Court of Appeal was giving guidance on how the test of reasonableness should be applied when determining whether or not it is reasonable to remove a child from the UK once he or she has been resident here for seven years. Following a discussion on the factors to be taken into account in the reasonableness test Lord Justice Elias at Para 46 stated:

“Even on the approach of the Secretary of State, the fact that a child has been here for seven years must be given significant weight when carrying out the proportionality exercise. Indeed, the Secretary of State published guidance in August 2015 in the form of Immigration Directorate Instructions entitled "Family Life (as a partner or parent) and Private Life: 10 Year Routes" in which it is expressly stated that once the seven years' residence requirement is satisfied, there need to be "strong reasons" for refusing leave (para. 11.2.4). These instructions were not in force when the cases now subject to appeal were determined, but in my view they merely confirm what is implicit in adopting a policy of this nature. After such a period of time the child will have put down roots and developed social, cultural and educational links in the UK such that it is likely to be highly disruptive if the child is required to leave the UK. That may be less so when the children are very young because the focus of their lives will be on their families, but the disruption becomes more serious as they get older.”

14. Ms Patel argued that First Tier Tribunal Judge Williams did not set out powerful reasons that would outweigh the children remaining. She emphasised that there had been no overstaying or criminality on the part of their parents. She distinguished their situation from that in MT and ET (Child's best interest; ex tempore pilot) Nigeria where the parents came as visitors and then overstayed. The Upper Tribunal at paragraph 27 referred to the same paragraphs I was referred to in MA (Pakistan).

15. In response, Ms Pettersen said 7 years was not necessarily determinative and referred me to paragraph 47 of MA (Pakistan) & Ors:

“Even if we were applying the narrow reasonableness test where the focus is on the child alone, it would not in my view follow that leave must be granted whenever the child's best interests are in favour of remaining. I reject Mr Gill's submission that the best interests assessment automatically resolves the reasonableness question. If Parliament had wanted the child's best interests to dictate the outcome of the leave application, it would have said so. The concept of "best interests" is after all a well established one. Even where the child's best interests are to stay, it may still be not unreasonable to require the child to leave. That will depend upon a careful analysis of the nature and extent of the links in the UK and in the country where it is proposed he should return. What could not be considered, however, would be the conduct and immigration history of the parents.”

16. Ms Pettersen said the judge set out the relevant case law and the factors taken into account. She acknowledged that there was a mistake in referring to the family having moved around and believed this derived from para 13 of the

social report submitted. However, she contended that that in itself plus a reference to the first appellant returning to Nigeria was not so fundamental as to undermine the decision. She acknowledged that another judge may have come to a different conclusion but it could not be said the decision was perverse.

17. I would agree that the factual mistakes are not so fundamental as to undermine the decision. The judge does refer to the relevant case law and the respondent's own guidance. The judge sets out the factors that are relevant to consideration of the appeal. I am conscious that I am not hearing the appeal at first instance. It may well be that a different judge could have reached a different conclusion on the same facts. However, having considered the decision I do not find a material error of law established. I find the judge has carefully considered the appeal and has set out relevant considerations. The judge referred to the relevant case law. The evaluation of those factors was a matter for the judge and the conclusion was one open to the judge. In reaching this conclusion I do not seek to take away from the careful preparation and clear arguments of Ms Patel.

Decision

No material error of law has been established in the decision of First Tier Tribunal Williams. Consequently that decision, dismissing the appeal, shall stand.

Francis J Farrelly

Deputy Upper Tribunal Judge