



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

Appeal Numbers: HU/11062/2016
HU/12885/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 21 November 2017**

**Determination
Promulgated**

On 24 January 2018

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**ATINUKE [A]
[H A]
(ANONYMITY ORDERS NOT MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Moffat
For the Respondent: Ms Aboni

DECISION AND REASONS

1. The appellants are citizens of Nigeria born in 1968 and 2007. They are mother and daughter. They appeal against the decision of the respondent made on 20 April 2016 to refuse the mother's application for leave to remain.

2. The history is that the mother arrived in the UK in 2004 on a visit visa valid for six months. She overstayed. In October 2014 she made an application for leave to remain under the family and private life rule. Her child was born in the UK as a result of a relationship which broke down within days of her giving birth. The father has no involvement with the child.
3. The respondent refused the application for the mother under the parent and private life routes and the child under the child and private life routes.
4. They appealed.

First tier hearing

5. Following a hearing at Hatton Cross on 23 May 2017 Judge of the First-Tier SL Farmer dismissed the appeals.
6. Her findings are at paragraph 12ff. Considering the child's best interests, she noted that she is a qualifying child but not a British citizen. She considered that it would be reasonable for her to leave with her mother with whom she has her primary attachment. Her mother has spent most of her life in Nigeria. The child has been exposed to the culture of her own nationality.
7. Moving on to consider the child's education, the judge found that she has over two years left of primary education. She found that she is not at a crucial stage in her education and that whilst continuity of education is important it was not of sufficient importance in her circumstances to make it unreasonable for her to leave the UK and live in Nigeria.
8. The judge went on to find the first appellant to be not a credible witness in respect of her claim not to have family, namely a mother, in Nigeria. Also, that she has been using different names, the indication being that she had been working illegally.
9. Returning to the child, the judge noted that the child is aged nine and that seven years from age four is likely to be more significant to a child than the first seven years of life. The child had spent five years and eight months since her fourth birthday and thus not yet seven years.
10. She went on to find that there would be no language concerns for the child, her mother would be able to work and there would be family support there. Further, there are no health concerns.
11. The judge in the further consideration of proportionality noted that the mother has been an overstayer since 2004 and had worked illegally since then.

12. The appellant sought permission to appeal which was granted on 22 August 2017.

Error of law hearing

13. At the error of law hearing before me Ms Moffat made several points. First, there had been a failure properly to consider the child's best interests. Instead of making clear findings on the child's best interests and then considering whether these best interests might nonetheless be outweighed by the countervailing public interest, including an assessment of the reasonableness of relocation, the judge had conflated the identification of best interests with the reasonableness of requiring the child to leave.
14. Second, the judge failed to have regard to relevant evidence, specifically, the many letters from school friends and others who form the core of her private life.
15. Third, although the judge identified seven years as a relevant benchmark for the development of social, cultural and educational ties that it would be inappropriate to disrupt, she erred in finding that since the period since her fourth birthday is less than seven years there is no significant disruption. Further, she had failed to take into account that the child will be entitled to register as a British citizen on her tenth birthday as she was born in this country.
16. Fourth, at one point in her assessment of the reasonableness of relocation, the judge used a higher test namely 'significant obstacle'.
17. Finally, aspects of the decision showed a failure to exercise anxious scrutiny. One paragraph appears to refer to different facts. Also, the assessment under section 117B appeared incomplete.
18. Ms Aboni's response was that the judge's decision showed detailed analysis on the material issues and that she had reached adequate findings. These included careful consideration of the child's best interests and that notwithstanding her ties here it was reasonable for her to relocate.
19. On the seven years point it was clear that the judge was aware of the significance of that time but she was entitled to follow the authority that the seven years from the age of four was the important period and to conclude that she had not passed that period.
20. Looked at in the round, the judge had reached adequate conclusions for the reasons she gave.

Consideration

21. In considering this matter in respect of ground one it is clear that the judge as she was required to do gave thought to the child's best interests as a primary consideration. She did so in detail finding that these were to remain with her mother, but that as the mother had no right to be in the UK such was the appropriate factual matrix in which best interests were to be considered. I agree with the respondent's submission that best interests and reasonableness are often so intertwined as to be inseparable and that the judge cannot be criticised for approaching best interests from a 'real world' context. As the court found in **EV (Philippines) and Others v SSHD** [2014] EWCA Civ 874:-

"In my judgement, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is considered. If neither parent has the right to remain, then that is the background against which the assessment is considered. Thus the ultimate question will be: 'is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?'"

22. I consider that the judge has comprehensively assessed the child's circumstances in the UK and appropriately taken into account the impact of removal. In that regard she made findings that she has been exposed to Nigerian culture in the UK, that she would face no language difficulties, that her mother, who has spent the vast bulk of her life in Nigeria, would be able to get work and support her, that there are family ties there with those who would be able to give additional support, and that there are no health issues. She also properly indicated that in considering best interests the mother's history was not a matter that the child should be punished for.
23. These were all findings which were open to the tribunal on the evidence.
24. It is submitted that the judge had erred in stating that the child '*has not established herself independently in her local community save for her close school friend*'. Whilst the appellants' bundle does contain a number of letters of support from schoolchildren and schoolchildren's parents and several others, I find the judge's failure to refer to more than one school friend to be immaterial. It is undeniable that at such a young age the child's life is centred principally around her mother and school. The judge's conclusion as to the limited private life was one that was open to her on the evidence.
25. On the issue of the child's length of residence it is clear that the judge was aware of the significant weight to be attached in the proportionality assessment to a child who has been here for seven years. The child was nine years old. However, the judge was entitled to conclude (per **Azimi-Moayed and Others (Decisions Affecting Children; Onwards Appeals)** UKUT 197, that the seven years from the age of four were

more significant than the first seven years of life and that the child, then nine years of age, was short of that period.

26. I find no merit in the submission that the judge failed to take into account that the child will be entitled to register as a British citizen on her tenth birthday. She may apply for consideration by the respondent for British citizenship to be granted. At the date of hearing she was not entitled to do so and when she becomes that age she is required to make a successful application. The issue of her right to make an application in the future was irrelevant to the tribunal's consideration of reasonableness.
27. Whilst it is correct to point out that at [20] the reference to the child having settled well at school not being a 'significant obstacle' was an error, I do not find it material. It is clear that the judge in her numerous other references was aware that the test was one of 'reasonableness'.
28. The reference to what appears to be a redundant paragraph at [42], while regrettable, does not detract from the overall consideration of the case.
29. Likewise, the incomplete assessment under section 117B does not fatally undermine the decision. The judge gave consideration to section 117B(6), carefully analysing the nature and strengths of the child's best interests including that she was settled at school and that she speaks English. The judge did not find that the mother was financially independent.
30. Whilst the decision could have been better structured I consider that the objections go more to form than to substance. She concluded for the reasons she gave which included that the mother had a very poor immigration history of long term overstaying and dishonesty about what she was doing during that time, that the significant weight to be given to the child's residence in the proportionality exercise was nonetheless outweighed by strong reasons in support of the public interest in immigration control. Looked at in the round the judge directed herself appropriately and reached findings which were open to her on the evidence.

Notice of Decision

The making of the decision of the First-tier Tribunal shows no material errors of law and the decision dismissing the appeal shall stand.

No anonymity order is made.

Signed

Date

Upper Tribunal Judge Conway