



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/11942/2016
HU/20682/2016

THE IMMIGRATION ACTS

Heard at Field House
On 29 June 2018

Decision & Reasons Promulgated
On 6 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MS O L O
MASTER S T O
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr B Adekoya, Atlantic Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are nationals of Nigeria born respectively on 13 February 1976 and 22 September 2007. The Appellants stated that they arrived in the United Kingdom on 8

November 2008 at which time the second Appellant was just over one year of age. They have not left the country since that time and having entered as visitors with leave for six months, they then overstayed.

2. On 1 February 2016 the Appellants' representatives made an application for leave to remain on the basis of family and private life and Article 8 outside the Rules. These applications were refused in a decision dated 22 April 2016. The appeals came for hearing before First-tier Tribunal Judge Buckwell on 4 January 2018 in a decision and reasons promulgated on 15 January 2018. The judge dismissed the appeal having rejected the credibility of the first Appellant in material respects and concluded that it will be reasonable to expect the second Appellant to leave the United Kingdom with his mother.
3. Permission to appeal was sought in time to appeal to the Upper Tribunal on the basis that the judge did not consider the best interests of the second Appellant nor adequate consideration of those best interests in light of his age and the policy of the Respondent which made clear that strong reasons had to be shown to require him to leave the UK.
4. Permission to appeal was granted by First-tier Tribunal Judge Grant-Hutchison in a decision dated 23 May 2018, on the basis that it was arguable that the judge had misdirected himself by failing to consider the best interests of the second Appellant in terms of Section 55 of the BCIA 2009 and Section 117B(6) of the NIAA 2002.

Hearing

5. At the hearing before me, Mr Bramble accepted that the First-tier Tribunal Judge had not addressed the specific circumstances of the second Appellant despite the fact that by the time of the hearing on 4 January 2018 the Appellant had been in the United Kingdom for over nine years and this clearly required consideration pursuant to Section 117B(6) of the NIAA 2002 and that, in essence, the judge had looked at the circumstances of the second Appellant through the lens of his mother which was a material error.
6. Mr Adekoya for the Appellants agreed. He submitted that the appeal should be remitted back to the First-tier Tribunal for a full *de novo* hearing.

Decision

7. In light of Mr Bramble's helpful concession, which I accept, I find there are material errors of law in the decision of First-tier Tribunal Judge Buckwell. In particular whilst the judge refers at [64] to the need to address the issue of reasonableness and at the same paragraph directed himself in respect of the Court of Appeal judgment in MA (Pakistan) [2016] EWCA Civ 705 and MM (Uganda) [2016] EWCA Civ 450 and the Section 55 duty, the judge did not, in fact, go on to consider the issue of reasonableness with regard to the second Appellant's specific personal circumstances.
8. It is clear from the judge's decision that he took a dim view of the credibility of the first Appellant, in particular the issue relating to the identity of one Abiodun Ogunbowale

a person in respect of whom transactions were shown in the Appellant's Barclays and Nationwide bank account statements and who bears the same name as the named father on the second Appellant's birth certificate.

9. The judge did not accept her evidence and held at [56]:

"Those bank statements also showed that there is every likelihood that the gentleman concerned who is the father of the second Appellant is also resident in this country."

10. However the judge did not go on to consider the potential repercussions of this finding, which is clearly material to an assessment of the reasonableness of removal of the second Appellant if the person who is named as his father on the birth certificate is residing in the United Kingdom and has some form of leave or settled immigration status, which is not currently known.
11. Therefore I remit the appeal for a hearing before the First-tier Tribunal. The findings of fact by First-tier Tribunal Judge Buckwell in respect of the credibility of the first Appellant at [54] to [66] are maintained. Further oral evidence is likely to be necessary and the findings of fact can be built on by the First-tier Tribunal judge who re-hears the appeal.

Notice of decision

I find material errors of law in the decision of First tier Tribunal Judge Buckwell. The appeal is remitted for a hearing *de novo* before the First tier Tribunal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Rebecca Chapman*

Date 5 July 2018

Deputy Upper Tribunal Judge Chapman