



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

Appeal Number: HU/13725/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 4 December 2017**

**Decision & Reasons  
Promulgated  
On 26 January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**EA**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms I Isherwood, Home Office Presenting Officer

For the Respondent: Mr S Karim, Counsel instructed by Chris Alexander  
Solicitors

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Colvin to allow the appeal of the respondent child on Article 8 human rights grounds.
2. For ease of reference the respondent will hereinafter be referred to as the applicant.

3. The applicant is a citizen of Nigeria whose date of birth is [ ] 2008. His mother came to the United Kingdom in 2005 as a visitor and has remained in the UK since. The applicant was born in the UK on [ ] 2008. His father, [OA] and his mother did not marry. His father's name is not on the birth certificate. It was claimed that he did not agree with her having children. His whereabouts are unknown according to the applicant's mother.
4. The applicant and his mother live with his father's sister, [Fa] and her family. His mother has lived with [Fa] since she was pregnant with the applicant and that is the only home the applicant has lived in from his birth.
5. At the hearing the judge heard evidence from the applicant's mother, [FEA] and [Fa]. [Fa] is a British national and the applicant's aunt. The judge found both witnesses credible.
6. The judge's findings of fact are set out at paragraphs 16 to 18. The appellant's grounds do not challenge any of the facts found by the judge. The judge found at paragraph 16 that the applicant's mother came to the United Kingdom in 2005 at the age of 30 on a visitor's visa and has stayed ever since. She said she made an application in 2010 to regularise her status which was refused and this may be the case as the Secretary of State has referred to an application being made for the applicant as a dependent child at around this time in 2009/2010. After making further enquiries during the course of the hearing, the respondent's representative, Ms Burrell reported that it was on the Home Office computer that she made a human rights application on 23 August 2013 which was refused on 9 September 2015. The judge stated that this would have been around the same time that this application was made solely in the applicant's name. The judge accepted that [FEA] has her parents and at least one sister with whom she is in contact in Nigeria.
7. At paragraph 17 the judge considered the applicant's circumstances. She found that the applicant was now aged 8 years and 9 months. He was born in the UK and has lived here continuously since then. Like his mother, he is a Nigerian national but has never visited the country and does not speak any Nigerian language. He is in full-time education at primary school. He has a younger brother who was born in 2013. They have always lived with his aunt who is a sister of his father, [OA], and being supported by this aunt and her family. Whilst there were inconsistencies in the evidence as to the presence of [OA] in the household between 2007 and 2015, the judge was satisfied that this is likely to have arisen from the fact that he was clearly not a particularly reliable presence either as the partner of [FEA] or as the father of the two children. The judge said that [Fa] the aunt said that [OA] did not really have a relationship with the children whereas the children and their mother were part of the "whole family arrangement" with her family which included her husband and two children aged 18 and 17.

8. The judge stated at paragraph 18 that it was the evidence of the aunt which needed to be given particular consideration in this case. She found her to be a reliable and sensible witness who had a good understanding of the upbringing of the applicant and his needs. She said that because he had lived in her family house since he was born, he was viewed as a younger brother by her children. She also described him as being “like her son” because of the responsibility that she has always felt towards him and the very close bond that they enjoyed. The judge said she was in no doubt that because of this evidence that the applicant was very strongly attached to this aunt and considered her and her family to be part of the family life that he has always had in this country.
9. The judge then considered whether it would be reasonable to expect the applicant to leave the UK under paragraph 276ADE(iv) as he has continuously lived in the UK for at least seven years. In her assessment as to the test of reasonableness, she had to take account of what was in the best interests of this child apart, from remaining with his mother and brother.
10. The judge had regard to the case of **EV (Philippines) v SSHD [2014] EWCA Civ 874** and the recent case of **MA (Pakistan) & Others [2016] EWCA Civ 705** where it was emphasised once again that the fact that a child has been in the UK for seven years must be given significant weight when carrying out the proportionality exercise. The judge also considered the Upper Tribunal case of **BD & Others (Article 8 - conjoined family claims) Sri Lanka [2016] UKUT 00108** in which a similar ruling was given. The judge also had regard to the Home Office IDI: family migration – family life (as a partner or parent) and private life 10-year route, (August 2015) which states at 11.2.4 that:

*“The longer the child has resided in the UK, the more the balance will begin to swing in terms of it being unreasonable to expect the child to leave the UK, and strong reasons will be required in order to refuse a case with continuous UK residence of more than 7 years.”*

11. The judge found as follows at paragraphs 24 and 25:

*“24. However, there is the countervailing factor in this case of the immigration history of the mother who has been an unlawful over-stayer after her visitor’s visa expired in 2005. It has frequently been stated that a child’s best interests should not be compromised on account of the misdemeanours of his or her parents and this is recognised in the UN Convention on the Rights of the Child at Article 2.2. However, I accept that at paragraph 45 of MA (Pakistan) it was accepted that the view taken in MM (Uganda) v SSHD [2016] EWCA Civ 450 that the behaviour of the parents can be weighted in the balance is currently to be followed.*

*25. In making my assessment I have taken into account, as stated above, the unusual dimension in this case which is that the*

*appellant has established a significantly strong bond with his aunt and her family with whom he has lived all his life. It is this aunt and her family that has fully supported him and his mother and brother in every way and although she was candid in her evidence when she said that she could continue financially supporting them in Nigeria, I accept the submission that this is only part of the story: it is the daily emotional support that has clearly been so important to the appellant in his upbringing and is likely to continue to be as he enters the most formative years of his childhood. And whilst the immigration conduct of the appellant's mother is not to be condoned I find that it is not of the 'worst sort' of immigration misbehaviour that can arise in such cases. Taking that into account and the fact that the respondent has not put forward 'strong reasons' why the appellant should be refused on the grounds of reasonableness, I have reached the conclusion that it is not reasonable for the appellant to leave the UK in all the circumstances."*

12. The grounds upon which the appellant was granted permission argued firstly that the judge failed to apply binding case law without good reason. This ground relied on **EV (Philippines)** and **Zoumbas [2015] UKSC 74** where the Supreme Court considered future rights to healthcare and education within the UK of children who were not British citizens stating that they had no right to future education and healthcare in this country, that the children were part of a close-knit family with highly educated parents and were of an age when their emotional needs could only be met within the immediate family unit.
13. The second ground argued that in allowing the applicant's appeal on the basis that the SSHD had failed to give strong reasons why the applicant's return with his mother would be reasonable, the judge failed to give adequate weight to the fact that it is always considered in a child's best interests to remain with his parents if possible. The grounds referred to the mother's immigration history and argued that the judge failed to consider the evidence in the round as it was asserted that there are clear ties to Nigeria in that he has been raised in a household where that culture is predominant and has remaining ties to that country both maternally and potentially paternally. The ground relied on **E-A (Article 8 - best interests of child) Nigeria [2011] UKUT 315**.
14. In granting permission First-tier Tribunal Judge Lambert said at paragraph 4:

*"Examination of the judge's decision reveals reasoning in the form of marked emphasis on the appellant's relationship with his paternal aunt and cousins, with whom he and his mother had always lived. However the absence of similar consideration of, or weight attached to, the primary bond with his mother does, in the context of the case law and best interest, render the ground arguable. The judge has not addressed the prospect of the child being separated from his mother by prospective removal to Nigeria."*

15. Ms Isherwood took me through the judge's decision. She submitted that the judge did not address the applicant going back to Nigeria with his mother who, as far as we know, is his primary carer. She relied on paragraph 21 of **MA** where the Court of Appeal held that in constituting Section 117B(6), the only relevance of the seven year period is that once a child has been in the UK for that length of time, it is a factor which should be given particular weight when assessing whether it would be reasonable for the child to leave the UK. Ms Isherwood submitted that the judge did not take into account the conduct of the applicant's mother. The judge merely relied on the strong bond between the applicant and his aunt's family and had failed to address all other factors, such as the conduct of the applicant's mother.
16. Mr Karim submitted that this was a classic case of a disagreement with the reasoning of the judge. He submitted that the judge took into account all relevant matters on both sides. Whilst Ms Isherwood took issue with the shortness of the witness statements by the applicant's mother and his aunt, Mr Karim said that the decision was not predicated on the witness statement but also on the evidence-in-chief and cross-examination. He submitted that in the context of the child, he has grown up with his aunt throughout the entirety of his life. He asked me to take into account that in six months' time, the applicant will become a British citizen and cannot be removed from the UK. I find this submission irrelevant for the purposes of this case as at the date of this hearing, the applicant had not reached the age of ten and was still a Nigerian national.
17. Having considered the submissions made by both parties, I agree with Mr Karim that the judge's decision does not disclose an error of law. I find that the judge considered all the evidence that was before her, including the concerns raised by the Secretary of State which she identified in bullet points at paragraph 12 of the decision.
18. I note that the credibility findings made by the judge have not been challenged. At paragraph 19 the judge identified what the issues she had to consider were in terms of paragraph 276ADE of the Immigration Rules. The judge identified the relevant case law, namely **MA (Pakistan)** and **MM (Uganda)**. She applied the case law to her findings. She also had regard to the respondent's policy guidance in respect of a child with continuous UK residence of more than 7 years.
19. The judge considered the applicant's mother's immigration history as a countervailing factor at paragraph 24. At paragraph 25 which is the crucial finding made by the judge, she identified the particular issues which she took into account in reaching her conclusion.
20. I find that the Secretary of State's grounds of appeal disclose no arguable error of law in the judge's decision.

### **Notice of Decision**

21. The judge's decision allowing the applicant's appeal shall stand.

**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

Date: 15 January 2018

Deputy Upper Tribunal Judge Eshun