



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/18193/2016

THE IMMIGRATION ACTS

Heard at Field House
On 11th April 2018

Decision & Reasons Promulgated
On 23rd May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

ABIODUN OLUWAKEMI OSOBU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe, Counsel instructed by Owens Solicitors
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Nigeria born on 3rd January 1994. The Appellant first entered the UK on 14th March 2015 with a visa valid until 9th August 2015 in order for her to see her family. In 2001 her parents and four siblings had entered the

UK and had become British citizens in 2003. The Appellant had remained living in Nigeria with her grandmother. On 7th August 2015 the Appellant applied for indefinite leave to remain as a dependent child. That application was refused for the reasons given in a Reasons for Refusal document dated 13th July 2016. The Appellant appealed and her appeal was heard by First-tier Tribunal Judge Butler (the Judge) sitting at Birmingham on 9th August 2017. He decided to dismiss the appeal for the reasons given in his Decision dated 4th September 2017. The Appellant sought leave to appeal that decision and on 19th February 2018 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge dismissed the appeal because he found that the Appellant did not meet the requirements of the relevant Immigration Rule. That decision has not been challenged in this appeal. The Judge also dismissed the appeal because he found that the interference with the Appellant's family life caused by the Respondent's decision was proportionate.
4. At the hearing before me, Mr Pipe referred to the grounds of application and argued that the Judge had erred in law in coming to this conclusion. Despite a concession by the Respondent in the Reasons for Refusal document, the Judge decided that he was not satisfied that the Appellant's grandmother, with whom she had lived in Nigeria, had died. The Judge had not put this point to the Appellant at the hearing before him in accordance with the **Surendran** guidelines. The Respondent had not been represented at that hearing. The error concerning the Appellant's grandmother affected the Judge's decision as to credibility. Further, the Judge in considering the Article 8 ECHR issue had not followed the format set out in **Razgar**. The Judge had carried out no proper assessment of proportionality.
5. In response, Ms Isherwood argued that there had been no such material error of law. The Judge had erred in finding that the Appellant's grandmother was deceased, but this was not a material error. The Appellant was now 23 years of age and capable of looking after herself. The Judge had not referred to the Appellant's grandmother in paragraph 27 of the Decision when finding that the Appellant could return to Nigeria without problem. The Judge had not made a finding of emotional ties between the Appellant and her grandmother more than the norm.
6. I find a material error of law in the decision of the Judge which I therefore set aside. Quite apart from the error concerning the Appellant's grandmother, the Judge found that he could not consider the Appellant's Article 8 ECHR rights outside of the Immigration Rules in the absence of any exceptional circumstances. However, he then went on to consider those Article 8 ECHR rights at paragraphs 32 and 33 of the Decision. However, he did so in the most cursory way with no consideration of the relevant evidence and without carrying out a balancing exercise necessary for any assessment of proportionality. This amounts to a material error of law.

7. I did not proceed to remake the decision in the appeal in accordance with the provisions of paragraph 7.2(b) of the Practice Statement. Full judicial fact-finding in respect of the Article 8 ECHR issue still has to be done.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision in the appeal will be remade by the First-tier Tribunal.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed find no reason to do so.

Signed

Date 20th May 2018

Deputy Upper Tribunal Judge Renton