



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/26105/2016

THE IMMIGRATION ACTS

Heard at Newport
On 5 October 2018

Decision & Reasons Promulgated
On 25 October 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**KENNETH [N]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Dieu, legal representative, Asher & Tomar Solicitors
For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. On 19 November 2017 the respondent refused the application of the appellant, a citizen of Nigeria, for ILR on the grounds of long residence. The appellant's appeal was heard by Judge Walker of the First-tier Tribunal who, in a decision sent on 31 October 2017, dismissed it.
2. The appellant's grounds of appeal are not numbered but have two aspects. It is first of all alleged that the judge failed to consider the best interests of the appellant's

children, in particular that of the elder daughter, who has lived in the UK all her life and had developed and formed friendships and relationships with their school and community. It is secondly stated that the judge erred in failing to recognise that after a period of seven years “the child will have put down roots and developed social, cultural and educational links in the UK such that it is highly likely disruptive if the child is required to leave the UK” (quoting from **MA (Pakistan)** [2016] EWCA Civ 706).

3. The second point made in the grounds can immediately be discarded. As Mr Dieu conceded, at the date of hearing (12 October 2017) and the date of promulgation (31 October 2017), the eldest child had only been in the UK for six years, eleven months). She was not therefore a qualifying child for the purposes of the Immigration Rules or of s.117(6) of the NIAA 2002 and did not stand to benefit from the guidance given as regards qualifying children in **MA (Pakistan)**. (It appears the misrepresentation made in the grounds regarding this misled Upper Tribunal Judge Bruce into assuming they were qualifying children at the date of promulgation and granting permission for that reason).
4. I heard succinct submissions from both parties, the main thrust of Mr Dieu’s submissions being that the judge had erred in failing to treat as a relevant consideration the length of time the appellant’s elder daughter had lived in the UK, contrary to the guidance given by Lewison LJ in **EV (Philippines)** [2014] EWCA Civ 874 who listed seven factors that decision makers must take into account when applying the proportionality test to cases in which children are concerned, the first two which were:
 - “(a) their age; and
 - (b) the length of time that they have been here.”

Mr Howells contended that the judge’s decision showed he had taken these two as well as the other factors into account.

5. Before considering this particular issue, I would first of all observe that I see nothing to criticise in the judge’s treatment of the other five factors listed in **EV (Philippines)** (which principally concern educational, linguistic, medical or other difficulties in adapting to life in their country of origin). At paragraphs 32-39 the judge set out sound reasons for considering that the appellant has retained firm links with his country of origin; that being highly educated he will not have difficulty in obtaining employment there; that he could help his children with their education; that his children had no significant health problems; that as the official language in Nigeria is English, his children will be able to negotiate the language in Nigeria (and could get a tutor if their parents wanted them to learn the local language as well); that in the UK the children are at the very beginning of their education and will have no difficulty in picking up their education in Nigeria; that the children need to remain with their parents and that:
 - “As they would return to Nigeria as a family and to the roots that the appellant retains there, the children’s and the appellant’s family life will not be disrupted

to any great extent and certainly not to the extent that their removal is disproportionate to the legitimate aim of effective immigration control”.

To the extent that the grounds disagree with the judge’s evaluation of these various factors, they amount to mere disagreement with the judge’s findings.

6. As regards factors (a) and (b), it is clear that the judge was fully aware of the children’s ages: see paragraph 3, for example. It is true that nowhere does the judge expressly refer to the length of time they have been in the UK, but it is clear that he was fully aware of that, as can be seen from the details he recites at paragraph 3, his reference in paragraph 28 to their being born in the UK and his statement at paragraph 37 that they were “at the very beginning of their education”.
7. Mr Dieu makes a good point that as the elder daughter was only a few days short of 7 years she was entitled to be considered as someone who had “put down roots” virtually as strong of those of a child in the UK for a period of seven years, but the law (through the concept of a qualifying child) and the case law (through the guidance given in **MA (Pakistan)**) in respect of qualifying children, draws lines and the simple fact is that this appellant’s children fall on the wrong side. If the judge’s decision had manifested a disregard for the children’s social, cultural and educational links in the UK, I might have considered the matter differently, but his proportionality assessment took account of all relevant factors and was within the range of reasonable responses.
8. For the above reasons I conclude that the judge did not materially err in law and his decision must stand.
9. I would make the obvious observation that the eldest child has now been in the UK over seven years, indeed nearly eight years now. The appellant will doubtless make further representations asking the respondent to consider his case applying the current policy regarding children who have resided in the UK over seven years. It is not within my remit to second guess what the respondent’s response might be; my concern is only with the legal efficacy of the decision made by Judge Walker in October 2017.

No anonymity direction is made.

Signed

Date: 20 October 2018



Dr H H Storey
Judge of the Upper Tribunal