



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-004240
First-tier Tribunal No:
HU/51447/2022
Case No: UI-2022-004241
First-tier Tribunal No:
HU/51446/2022
IA/02305/2022 & IA/02303/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 1 May 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

STELLA EHAERIMEN OGOLOWA
UYIRITORITSE IVY DENEDO
(NO ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Sanders, counsel, instructed by Immigration Legal Advice Centre

For the Respondent: Ms Z Young, Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 24 March 2023

DECISION AND REASONS

1. We have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of the Appellants. Having considered all the circumstances and evidence we do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings these appeals but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. These are appeals by the Secretary of State against a decision of First-tier Tribunal Judge A.M.S. Green, promulgated on 26 July 2022 which allowed the Appellants' appeals on article 8 ECHR grounds.

Background

3. Both appellants are Nigerian nationals. The first appellant is the mother of the second appellant. The first appellant was born on 14 September 1988. The second appellant was born on 3 October 2017.

4. The first appellant entered the UK on 26 September 2017 as a student, with a visa valid until 18 July 2018. One week later, on 3 October 2017, the second appellant was born in the UK.

5. On 19 March 2021, the appellants applied for leave to remain in the UK on article 8 ECHR grounds. Neither of the appellants could meet the requirements of the immigration rules. On 26 February 2022, the respondent refused both appellants' applications. The respondent could not see a reason to consider the applications outside the immigration rules.

The Judge's Decision

6. The Appellants appealed to the First-tier Tribunal. First-tier Tribunal Judge Green ("the Judge") allowed the appeals against the Respondent's decisions on the basis that it was in the best interests of the second appellant to remain in the UK.

7. Grounds of appeal were lodged and on 24 October 2022 Upper Tribunal Judge Macleman gave permission to appeal stating

1. In the FtT, Judge Green allowed this appeal by a Nigerian mother and daughter, based on the best interests of the child, who has ASC (autistic spectrum condition). Judge Karbani refused permission to appeal to the UT.

2. The decision is lengthy, but the explanation for the outcome at [70] this brief, and arguably less than legally adequate to explain why the appellants have a right of private life grounds to remain in the UK.

The Hearing

8. For the respondent, Ms Young moved the grounds of appeal. Ms Young took us to [67] of the decision and told us that it is only there that the Judge's reasons for his decision start. Ms Young told us that although the heading "*Discussion and Conclusions*" features above [51], [51] to [67] of the decision are nothing more than a rehearsal of the submissions that were made. It is only [67] to [70] that contain any reasoning.

9. Ms Young told us that the Judge simply allowed the appeals on the unexplained premise that it is in the second appellant's best interests to remain UK. Ms Young told us that the Judge failed to carry out any meaningful

proportionality balancing exercise. She told us that the Judge's decision is devoid of consideration of section 117B of the 2002 Act. Ms Young told us that the Judge failed to factor in the facts and circumstances relevant to the first appellant's appeal in reaching his decision.

10. Ms Young told us that the decision is tainted by material error of law. She asked us to allow the appeal and set the decision aside.

11. For the appellants, Ms Sanders opposed the appeal. She told us that the Judge's findings from [67] to [70] must be viewed against his consideration of the submissions rehearsed between [51] and [66]. Ms Sanders conceded that the decision is not a model of clarity, but said that a careful reading of the entire decision demonstrates that all of the necessary and relevant factors have been considered. Ms Sanders told us that the Judge candidly declares that if the appeal was about the first appellant only it would not succeed, but then considers the nature and effect of the second appellant's neuro-divergent condition, and, having made detailed findings of fact, reaches the sustainable conclusion that it is in the best interests of a young child with an early diagnosis of ASC to remain in the UK.

12. Ms Sanders told us that the Judge reached a reasoned decision which is well within the range of decisions available to him. Ms Sanders told us that the decision does not contain an error of law, material or otherwise, and asked us to dismiss the respondent's appeals and allow the Judge's decision to stand.

Analysis

13. Between [1] and [3] the Judge sets out the background to the appeals. Between [5] and [15] (beneath the heading "*the reasons for refusal*") the Judge sets out the first appellant's claim and the respondent's reasons for rejecting what the first appellant says. At [16] the Judge summarises the issues to be determined by the tribunal, and then, between [17] and [23] the Judge makes his findings of fact.

14. Between [24] and [26] the Judge makes further findings of fact drawn from the background materials, quoting relevant passages from the respondent's own country information note "Nigeria: medical treatment and healthcare" (version 4.0; December 2021).

15. Between [27] and [50] the Judge takes lengthy and detailed guidance in law.

16. The remainder of the Judge's decision falls under heading "*Discussion and Conclusions*". The respondent's position is that [51] to [66] is nothing more than a record of submissions made by parties' representatives. It is not surprising that the respondent argues that the Judge's reasoning is restricted to 3 paragraphs - [68] to [70] of the decision - because [67] starts with the brief sentence,

I now turn to my decision.

17. Permission to appeal was granted because

The explanation for the outcome [70] is brief

18. If the Judge's reasoning really was restricted to the last page of the 22 page decision, and was entirely encompassed in the last three paragraphs of a decision which is 70 paragraphs long, there would be more merit in the submission that the decision was inadequately reasoned.

19. The headings used in the decision create confusion because they are not an accurate summary of the ensuing paragraphs. The reasons for the Judge's findings can be found scattered throughout the decision, rather than collected together after what appears to be their introduction at [67].

20. A careful approach to the decision enables the reader to find the various component parts of the Judge's reasoning. The reasons are contained in the decision, just not necessarily where the reader could anticipate finding them. That does not, however, mean that the reasoning is inadequate. We bear in mind that this decision is addressed to the parties who were aware of what was in issue and were aware of the evidence.

21. At [67], the Judge says that if the first appellant's appeal stood alone it would not succeed. There, he clearly draws a focus on the needs of the four-year-old second appellant who has a diagnosis of ASC.

22. At [68] the Judge succinctly explains why returning the second appellant to Nigeria would lead to unduly harsh consequences. At [69] the Judge explains why the two appellants are inextricably linked by article 8 family life, and the relevance of the second appellant's neuro-divergent condition.

23. The factors which lead to the summary explanation for the outcome of the decision at [70] are contained in the Judge's findings of fact, set out between [17] and [26]. Between [27] and [29] the Judge correctly reminds himself of the statutory provisions he must follow and the relevant immigration rules. Between [51] and [66] the Judge records parties' agents' competing interpretations of the impact of the law on the facts as the Judge found them to be.

24. The Judge's findings from [68] to [70] cannot be read in isolation. When the entire decision is read, it can be seen that the Judge made clear findings in fact which are not challenged. The Judge took correct guidance in law before wrangling with the submissions made by parties' agents. The Judge explains why he preferred the submissions made by counsel for the appellant. Further, it must be borne in mind that these are appeals in which the issues had been clarified by the exchange of an appellant's skeleton argument and a reply from the respondent. The decision must be read in that context.

25. The Judge's findings of fact go without challenge. The Judge took correct guidance in law before reaching a decision well within the range of reasonable decisions available to the Judge.

26. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

27. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all of the evidence. There is nothing unfair in the procedure adopted nor in the manner in which the evidence was considered. There is no challenge to the Judge's fact-finding exercise. The respondent might not like the conclusion that the Judge arrived at, but the correct test in law has been applied. The decision does not contain a material error of law.

28. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

29. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 26 July 2022, stands.

signed **Paul Doyle**
Deputy Upper Tribunal Judge Doyle

Date 29 March 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.