



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-006232
UI-2022-006231
UI-2022-006233

First-tier Tribunal Nos:
HU/56020/2021 (IA/14651/2021)
HU/56021/22021 (IA/14659/2021)
HU/56019/2021 (IA/14647/2021)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 May 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

Ajibola Onafowokan (First Appellant)
Daniella Olayinka (Second Appellant)
Samuel Olayinka (Third Appellant)
(NO ANONYMITY ORDER MADE)

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellants: Mr Anyiam, Counsel instructed by AY Sovereign Solicitors
For the Respondent: Mr Avery, Senior Home Office Presenting Officer

Heard at Field House on 17 April 2023

DECISION AND REASONS

1. The appellants are citizens of Nigeria. The first and second appellants are a married couple. The third appellant is their daughter who was born in the UK in 2017. The first appellant has never had leave to enter or remain in the UK. The second appellant entered the UK in 2015 as a visitor and overstayed.
2. The first appellant claims that he has lived in the UK since 1998 and therefore is entitled to a grant of leave on the basis of twenty years' continuous residence.

3. The appellants also claim that removing them as a family unit to Nigeria would violate Article 8 ECHR. One of the reasons they contend this would be the case is that the third appellant has had several medical problems.
4. On 22 September 2021, the respondent refused the appellants' human rights claim. The appellants appealed and their appeal came before Judge of the First-tier Tribunal Traynor ("the judge"). In a decision dated 31 October 2022 the judge dismissed the appeal. The appellants are now appealing against this decision.

Decision of the First-tier Tribunal

5. The judge did not accept that the first appellant had lived in the UK for over twenty years as there was an absence of evidence establishing residency prior to 2010.
6. The judge found that removal to Nigeria would not interfere with the appellants' family life as they would be removed as a family unit.
7. The judge rejected the argument that the appellants would face very significant obstacles integrating in Nigeria. In reaching this conclusion, the judge had regard, in particular, to the second appellant's work experience and education in Nigeria and to the work experience gained by the first appellant in the UK. The judge also found that the first and second appellants had retained their familiarity with the customs, culture and language of Nigeria.
8. The judge made negative findings about the credibility of the first and second appellants in the light of the first appellant's use of false documents to work and the second appellant's entry to the UK in 2015 as a visitor with a clear intention of not returning to Nigeria.
9. With respect to the effect of removal to Nigeria on the third appellant, the judge's findings are set out in paragraph 48. The grounds of appeal focus on this paragraph of the decision and therefore I have set it out in full. Paragraph 48 states:

"48. It would seem that the First and Second Appellants wish to pray in aid of their circumstances the fact that their child who was born in 2017 suffers from various ailments which I am informed involved multiple allergies for which she is receiving treatment in this country. That information was known to the Respondent who has given due to consideration to this and I have received further information which updates me on appeal. The question that the Respondent's representative properly asked during the course of cross examination was whether the Appellants had established that their child would not have the opportunity of accessing medical treatment and appropriate medical care, as well as medication, in Nigeria. I find it highly relevant that neither the First or Second Appellant have made any such enquiry, and in fact one of them suggested that such facilities would not be available because they had asked somebody who had come from Nigeria. In the absence of any evidence which would show that the Appellants' child cannot access care and treatment for what I find are common ailments, then I find this does not weigh in favour of the Appellant's claim that the Respondent has failed to comply with the requirements of Section 55 of the Borders, Citizenship and Immigration Act 2009 to consider the best interests of their child. I find that the best interests of the child will be to remain with her parents who, as I have indicated, are resourceful and very capable of providing her with the necessary support of ensuring that she will be able to

access appropriate medical care and treatment in Nigeria. I find that I may not have taken that view if the Appellants had produced to me some evidence which would indicate that the particular ailments their daughter suffers from would be difficult to treat in Nigeria. I have no doubt that she does suffer from these conditions and it will be distressing when she is ill. Nevertheless, such ailments are not restricted to the United Kingdom and I find that in all probability there will be suitable care and medical treatment available for their child in Nigeria upon their return there. Therefore, where I have separately considered the child's Article 8 rights in accordance with the provisions of Section 55 of the 2009 Act, I find that the Respondent's decision in refusing the Appellants' applications and expecting them to return to Nigeria is in that child's best interests as she will be able to remain with her parents who are capable of giving her day to day care and support and ensuring that she receives appropriate treatment for her medical conditions in Nigeria. I therefore find that this aspect of the Appellants' claim for leave to remain on private life grounds is not sufficient to show that the Respondent's decision is disproportionate to such rights. I find that it cannot amount to a breach of their Article 8 rights."

Grounds of Appeal

10. The appellant advanced six grounds of appeal.
11. Ground 1 submits that the judge failed to consider crucial medical evidence relating to the third appellant in the form of a letter dated 28 October 2020 from a consultant paediatrician stating as follows:

"I would be very grateful if you could review Daniella in your Epilepsy clinic. She had an EEG on 20th October 2020 which reports awake background shows normal posterior dominant rhythm of 9Hz, normal for age of the child. There are right centrotemporal spike and wave epileptiform discharges. These sometimes show a frontal dipole positivity, and the discharges are activated in sleep occurring more frequently. **The findings suggest a focal epilepsy arising from right centrotemporal region and should be correlated to the clinical findings**".
[emphasis added]
12. It is submitted that the judge overlooked this evidence concerning the third appellant suffering from epilepsy.
13. In ground 1 it is also contended that the judge trivialised the seriousness of the third appellant's medical condition by only referring to her allergies and describing them as "common ailments".
14. Ground 2 submits that the judge fell into error by, in the first sentence of paragraph 48 of the decision, bringing the adverse immigration history of the first and second appellants into the assessment of the best interests of the third appellant.
15. Ground 3 submits that the judge erred by failing to have regard to objective evidence before him about difficulties accessing medical treatment in Nigeria. The objective evidence referred to in this ground is paragraph 2.5.4 of the Home Office Country Information Note on medical treatment and healthcare in Nigeria ("the CPIN") which states:

"A 2019-published Intechopen, an online academic publisher, paper noted:

‘The high cost of accessing government specialist hospitals as well as teaching hospitals and the bureaucratic structure of general hospitals has increased the demand for private health provision, which predominantly caters for the middle-class cadre. Because of the availability of genuine drugs and the services rendered by private practitioners, the costs are generally high and are, thus, not easily accessible to the masses. Although the licensed pharmacist on the other hand sells genuine drugs, there are instances where some have engaged in sharp practices by mixing genuine and fake drugs or sometimes.’”

16. Ground 4 argues that there was an excessive delay in promulgation of the decision. It is contended that this delay may explain the judge missing crucial evidence about the third appellant’s epilepsy and not referring to the CPIN.
17. Grounds 5 and 6 argue that the judge failed to refer to and have regard to statutory guidance and established case law on the significance of the best interests of a child.

Grounds 1 and 3: the third appellant’s medical condition

18. Mr Anyiam submitted that the judge overlooked critical evidence about the third appellant’s epilepsy. The difficulty with this argument, as identified by Mr Avery, is that there is a lack of evidence to support a finding that the third appellant suffers from epilepsy and/or that she requires any treatment or support due to epilepsy.
19. I asked Mr Anyiam to draw to my attention the medical evidence that was before the First-tier Tribunal confirming the nature and extent of the third appellant’s epilepsy and how it affects her life. He was unable to identify any evidence other than the letter dated 28 October 2020 referred to the ground 1 (the contents of which are set out above in paragraph 11). Accordingly, the only evidence before the First-tier Tribunal concerning the third appellant’s epilepsy was a letter from over two years ago stating no more than that an EEG was suggestive of a focal epilepsy and that this should be correlated to the clinical findings. There was no evidence before the First-tier Tribunal concerning the clinical findings referred to in the letter. Nor was there any medical evidence about the third appellant’s prognosis; what treatment (if any) she has received and/or might need in the future; or even if, following the letter of 28 October 2020, she was in fact diagnosed as having epilepsy. Given the paucity of medical evidence about the appellant suffering from epilepsy, there was no evidential basis for the judge to find that third appellant’s epilepsy was an impediment to the appellants relocating to Nigeria. Accordingly, no error of law arises from the judge not considering the letter of 28 October 2020.
20. Mr Anyiam argued that the judge trivialised the third appellant’s allergies by describing them as “common ailments”. I do not agree. Reading paragraph 48 as a whole, it is clear that the judge recognised that the third appellant’s allergies significantly impact her life. However, even if the judge erred by not recognising the severity of the third appellant’s allergies, the fact remains that there was an absence of evidence before the judge about the availability of treatment in Nigeria for the appellant’s condition and there was no evidence of the first and second appellants making enquiries about the availability of such treatment. Mr Anyiam argued that there was evidence, in the form of the CPIN (and in particular paragraph 2.5.4 of the CPIN). However, as observed by Mr Avery, paragraph 2.5.4

of the CPIN says nothing about treatment of allergies. Based on the evidence before him, the judge was plainly entitled to find that the third appellant does not suffer from medical conditions that would be difficult to manage or treat in Nigeria.

Ground 2: poor immigration history of parents when assessing the best interests of the child

21. I agree with Mr Anyam that the assessment of the best interests of a child must be focused solely on the child and it would be legally erroneous for a judge to treat as relevant to that assessment the immigration history of the child's parents. However, as submitted by Mr Avery, there is nothing in the decision to support the contention that the judge made this error. The first sentence of paragraph 48, which is the specific sentence criticised in the grounds, does not bring into the assessment of the third appellant's best interest the conduct of her parents. It simply points out that a significant aspect of the article 8 case advanced by the appellants relates to the health difficulties of the third appellant. This is plainly correct and I am in agreement with Mr Avery that there is no merit to ground 2.

Ground 4: delay in promulgation

22. Mr Anyiam acknowledged that the delay in and of itself was not a basis for setting aside the decision. He linked this ground to grounds 1 and 3, submitting that the delay could explain why the judge overlooked the third appellant's epilepsy and the CPIN. In the light of my findings in respect of grounds 1 and 3, this ground cannot succeed.

Grounds 5 and 6: authorities and guidance on the best interests of the child

23. In ground 5 it is submitted that the judge erred because of a failure to refer to statutory guidance on the best interests of children and in ground 6 it is submitted that the judge erred by failing to follow or consider established authorities on the best interests of a child. These grounds are misconceived because there is no obligation on a judge to refer to a particular statutory guidance or to cite well-known cases when assessing the best interests of the child. What matters is whether the judge - in substance - undertook the required assessment of the best interests of the child. In this case, the judge explicitly stated in paragraph 48 that he had "separately considered" the best interests of the third appellant. In my view, this plainly indicates that the judge addressed the best interests of the third appellant as a distinct consideration in the proportionality assessment, which is what the authorities require. Grounds 5 and 6 do not identify an error of law.

Notice of decision

24. The decision of the First-tier Tribunal did not involve the making of a material error of law and stands.

D. Sheridan

Appeal Numbers: UI-2022-006232
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Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 April 2023