IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001243
First-tier Tribunal No:
HU/50539/2023
LH/06907/2023

THE IMMIGRATION ACTS

Decision and Reasons Issued:
On the 08 August 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

MIO
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms Amanpreet Bhachu, Counsel, instructed by Catwright King
For the Respondent: Mr Christopher Bates, Senior Presenting Officer

Heard at Field House on 19 June 2024

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant from the decision of First-tier Tribunal Judge Row promulgated on 12 January 2024. By that decision, the Judge dismissed the Appellant's appeal from the Secretary of State's decision to refuse her human right claims based on Article 8 of the European Convention on Human Rights.

Factual background

2. The Appellant is a citizen of Nigeria and was born on 31 August 1993. She arrived in the United Kingdom on 6 June 2019, with entry clearance as a visitor valid from 1 May 2019 to 1 November 2019. She subsequently overstayed and, on 28 February 2022, made an application for leave to remain on the grounds of her private and family life. She relied on her relationship with her 61 years old mother and his 5 years old nephew. They are British citizens and settled in the United Kingdom. I shall refer to them as M and C respectively. C was placed in the care of Birmingham City Council in 2018 and was placed with M in 2019. The Appellant, in short, submitted that she played a significant role in C's upbringing along with M, who has health issues. The Secretary of State refused her application on 5 January 2023 and held that her removal from the United Kingdom would not be incompatible with Article 8. The Judge heard her appeal from the Secretary of State's decision on 11 January 2024 and dismissed it on 12 January 2024. Permission to appeal from the Judge's decision was granted on 1 May 2024.

Grounds of appeal

3. The Appellant's grounds of appeal, in short, contend that the Judge erred in relation to the evidence from the Independent Social Worker and the best interests of C.

Submissions

4. I am grateful to Ms Amanpreet Bhachu, who appeared for the Appellant, and Mr Christopher Bates, who appeared for the Secretary of State, for their assistance and able submissions. Ms Bhachu developed the pleaded grounds of appeal in her oral submissions. She invited me to allow the appeal and set aside the Judge's decision. Mr Bates resisted the appeal and submitted that there was no error of law in the Judge's decision. He invited me to dismiss the appeal and uphold the Judge's decision.

Discussion

5. The Judge, at [54], summarised the evidence from the Independent Social Worker in these terms:

> "There is a report from an independent social worker CG commissioned by the appellant. It is dated 24 May 2023 and is at page 62. That report concludes that the appellant has a strong parental relationship with [C]. She is actively involved in his care. It would be in the best interests of [C] for the appellant to be allowed to remain in the United Kingdom to enable the family life of [M], [C], and the appellant to continue. It is said that [C[requires intensive support and constant supervision which [M] could not provide on her own."

6. The Judge rejected the evidence from the Independent Social Worker and, at [58]-[59], held:

> "Her conclusions are inconsistent with the evidence from those involved in the clinical treatment of F and the background evidence from the school and Birmingham Children's Trust. I prefer the evidence of the professionals involved in the clinical treatment and legal care of [C]. It is reasoned. It is based on extensive assessments. It is consistent with what is happening in the household."

7. The difficulty is that the Judge has not identified the perceived inconsistency between the evidence from the Independent Social Worker and the evidence from other sources, including Birmingham Children's Trust. In fact, the evidence before the Judge included evidence from Diana Woods, who is the Supervising Social Worker at Birmingham Children's Trust, stating that:

> "… [The Appellant] offers support to her mother who from time to time has some arthritic pain, for example, [the Appellant] will take [C] to school if [M] is experiencing discomfort. I am confirming as SSW that [the Appellant] is a first call, back-up support for her mother and [the Appellant's] support is a vital aspect to the wellbeing of [C], who is best placed in the care of his natural family …"

8. It is tolerably clear that both the Independent Social Worker and the Supervising Social Worker at Birmingham Children's Trust agreed that the Appellant's presence is the United Kingdom is important for C's welfare. So far as the best interests of C are concerned, there is no real inconsistency in the evidence. In my judgment, the Judge erred in not giving adequate reasons for the conclusion that the evidence from these sources is inconsistent.

9. It is well-settled, as the Supreme Court endorsed in *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74 [2013] WLR 3690, at [10], that the best interests of a child are an integral part of the proportionality assessment under Article 8. In making that assessment, the best interests of a child must be a primary consideration. Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant. It is important to have a clear idea of a child's circumstances and of what is in a child's best interest before one asks oneself whether that interest is outweighed by the force of other considerations. In my judgment, the Judge's error relating to the evidence from the Independent Social Worker and the Supervising Social Worker at Birmingham Children's Trust vitiated their assessment of proportionality under Article 8.

10. I entirely accept that I should not rush to find an error of law in the Judge's decision merely because I might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly mentioned, it does not necessarily mean that it has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically. The reasons given by the fact-finding tribunal for its findings on the principal controversial issues must be adequate. The reasons must explain to the parties why they have won and lost on those issues. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the main issues in dispute. A challenge based on the adequacy of reasons should only succeed when the appellate body cannot understand the fact-finder's thought process in making material findings. In this instance, I am satisfied that the Judge's decision is wrong in law.

11. Mr Bates took me to the evidence relating to the circumstances of C and the Appellant. He submitted that the Judge's ultimate decision was right. There is considerable force in his submissions. The welfare of C is not a trump card in this context. I must, however, bear in mind that I am not sitting as a first instance tribunal making findings of fact. My task is to decide whether the Judge erred on a point of law such that the decision should be set aside. Giving the benefit of doubt to the Appellant, I find that the error made by the Judge was material to the outcome and constituted an error of law. I cannot rule out the possibility at this stage that a properly directed Judge may find that Article 8 is engaged and that the Secretary of State's decision is incompatible with it.

Conclusion

12. For all these reasons, I find that the Judge erred on a point of law in dismissing the Appellant's appeal and the error was material to the outcome. I set aside the Judge's decision and, applying the guidance in *AB (preserved FtT findings; Wisniewski principles) Iraq* [2020] UKUT 268 (IAC), preserve no findings of fact. Having regard to paragraph 7.2 of the Senior President's Practice Statement for the Immigration and Asylum Chambers, and the extent of the fact-finding which is required, I remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Row.

Decision

13. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a fresh hearing.

Anonymity

14. I consider that an anonymity order is justified in the circumstances of this case having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the Overriding Objective. I make an order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

Zane Malik KC
Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 31 July 2024