Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/25116/2013
IA/25104/2013
IA/24998/2013
IA/24999/2013

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
On 8 January 2014	**On 7 March 2014**

Before

UPPER TRIBUNAL JUDGE DEANS

Between

MR AOA (FIRST APPELLANT)
MS YSA (SECOND APPELLANT)
MASTER AA (THIRD APPELLANT)
MISS IAOA (FOURTH APPELLANT)
(Anonymity order made)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Present but not represented
For the Respondent: Mr P Mangion, Home Office Presenting Officer

DETERMINATION AND REASONS

1) Judge of the First-tier Tribunal Fox dismissed these appeals by a family of four from Nigeria. The first named appellant is the husband and father in the family. He was last given leave in May 2010 as a Tier 1 (Post-Study Work) Migrant. In March 2012 he applied for leave to remain and this was refused in a decision dated 3 June 2013. Refusal decisions were also made in respect of the first appellant's wife and two children as his dependants in the application.

2) The fourth appellant was born in the UK on 7 March 2011. The second and third appellants did not enter the UK with the first appellant but were granted entry clearance as visitors in February 2010. They entered the UK together on 29 March 2010.

3) The first appellant originally came to the UK as a student in December 2007. His application in March 2012 for leave to remain was made on human rights grounds on the basis that his two children require medical treatment.

4) In the refusal decisions the respondent intimated that the second, third and fourth appellants had no right of appeal as they did not have leave at the time their applications were made. The question of validity arose prior to the appeals being listed and the Duty Judge indicated that this should be addressed at the hearing before the First-tier Tribunal. It does not, however, appear to have been raised on behalf of the Respondent at the First-tier Tribunal.

5) The Judge of the First-tier Tribunal had evidence before him showing that the second appellant has had Hepatitis B and is a carrier of this disease. The disease is well controlled but she requires regular reviews. The judge considered that there would be adequate medical facilities in Nigeria.

6) The judge also had before him medical reports in respect of the two children. The third appellant has had some minor ailments but these have been treated and were unlikely to cause any concern or difficulty. The fourth appellant has been inoculated to protect against Hepatitis B and the judge was satisfied that she would receive adequate medical attention in Nigeria.

7) The judge considered the best interests of the children. He was satisfied that their best interests were served by their being with their parents. The older child was 9 years old and the younger one was 1½. The younger would have had little exposure to the culture and lifestyle of the UK as she was an infant. The older child had had the benefit of three years' education in a primary school in the UK. Although he would have formed attachments, at his age it would not have a profound effect upon him if he were to be removed from his school and his friends and neighbours. He would be able to adapt to life in Nigeria.

8) The judge found that the first appellant is a very well-qualified network engineer and would have no difficulty in securing employment. He might return to the polytechnic from where he was sent with financial support to study in the UK. The older child had attended a private nursery school in Nigeria and would be able to adapt to life in Nigeria.

Application for permission to appeal

9) The application for permission to appeal was prepared by the appellants personally. The first appellant takes issue with the finding by the Judge of the First-tier Tribunal that adequate medical facilities would be available in Nigeria. The first appellant states that there is no comparable health care available for Hepatitis in Nigeria compared with the UK. The first appellant had been told by a doctor that if his father and a cousin had been monitored and received good treatment for this disease they would not have developed cancer of the liver and would still be alive. The second appellant records that she had tests in Nigeria when she was pregnant with her first child but none of the tests showed that she had Hepatitis B. She only became aware that she was carrying the disease when she was pregnant in the UK.

10) The second appellant takes issue with the judge's finding about her employment in Nigeria. The judge noted that when she applied for entry clearance she described herself as a marketing manager in an investment company buying oil and gas on behalf of investors. In his evidence her husband said that his wife was a worker in a petrol station. The judge commented that there was a vast difference between these two descriptions.

11) In the application for permission to appeal the second appellant confirms that she was a marketing manager in an investment company. In her role the words "gas" and "petrol" were used interchangeably. Her husband said her work involved dealing with petrol and she maintains that this is the same as what she said. She maintains that there has been a misunderstanding or misinterpretation of the evidence.

12) The second appellant refers in the application to her second child, whose age is 2 years and 7 months and not 1½ years as recorded by the judge. She was due to have a further vaccination at the age of 3½ and would be monitored until 5 years old to ascertain that she would not have Hepatitis. This evidence had been disregarded. The second appellant said she would like her daughter to finish the vaccination process so she would not be infected.

13) In summary the appellants state that the Tribunal did not take all the evidence into consideration and did not reach correct findings.

14) In the grant of permission to appeal it was recorded that the grounds took issue with the judge's adverse findings on credibility about the appellant's intentions and the medical evidence. The grounds were found to be arguable because the determination contained such a significant number of textual errors that, in parts, sentences became incomprehensible and the reasoning for findings was unclear. The determination was not checked by the judge before it was sent out and it was accordingly arguable that the appellants had been deprived of a proper consideration of their appeal. Additionally, although this was not raised in the grounds, the determination did not

show that the judge engaged with any of the new Immigration Rules when considering the human rights claims.

Submissions

15) At the hearing I explained the background to the appeal and was then addressed by the first appellant. He referred me to a doctor's letter at page 4 of the appellant's bundle relating to the second appellant. He challenged the finding by the judge that treatment for Hepatitis in Nigeria was adequate and referred to news articles in relation to this which were lodged for the hearing before me. The first appellant explained that his wife and son were to attend medical specialists. His wife was due to have an investigation of a fibrocystic breast on 20 January 2014. His son was due to attend the orthopaedic and fracture clinic on 6 February 2014 and had an appointment with a physiotherapist on 25 March 2014. The first appellant explained that he was also waiting for checks and vaccination in respect of Hepatitis B in case it had been transferred to him from his wife.

16) On behalf of the respondent Mr Mangion addressed me in relation to the determination and the numerous textual errors it contains. Mr Mangion suggested that the determination had been prepared using voice recognition software but submitted that the reasoning could be followed. He referred to some of the errors, as follows. At paragraph 13, where the judge referred to "they had four is tuition fees …" that should read "they paid for his tuition fees …" At paragraph 15 where the determination referred to "the 25th of debris 2010" that should read "25th of February 2010". At paragraph 16 when the judge refers to the second appellant as having "described a rule was buying oil and gas" that should be "a role".

17) Mr Mangion suggested the biggest mistake was in paragraph 23 where, in relation to the third appellant, the judge wrote "These of inadequately treated and are likely to cause any concern or difficulty." In this context the judge was referring to the health of the third appellant. Mr Mangion submitted that it was clear from the context that the negatives in the sentence had been transferred and the sentence should read that the appellant's ailments were being adequately treated and were unlikely to cause any concern or difficulty. Mr Mangion acknowledged there was a mistake in paragraph 26 over the age of the younger child, who was 2½ at the time of the hearing. There was discussion of a sentence in paragraph 22 beginning: "The mosses satisfied on the evidence before me …" The proper reading was assumed to be "I must be satisfied on the evidence before me …" Mr Mangion submitted that these were isolated mistakes and the reasoning could be seen.

18) Mr Mangion then turned to the human rights issues. He submitted that the Judge of the First-tier Tribunal had not engaged with Appendix FM but had referred only to Razgar. The judge did not consider paragraph 276ADE or paragraph EX.1 of Appendix FM. This was an error of law in terms of MF (Nigeria) but the judge had

considered the appeal in the area where it was most likely to succeed. The judge did not follow the order of the questions in Razgar but did not miss any of the steps.

19) On the medical issues the judge dealt with the health of the third appellant at paragraph 23. There was some mention at the previous hearing of the third appellant receiving therapy but no report in relation to this. It would not reach the threshold for Article 3. Under Article 8 it was a question of the best interests of the children. They were unlikely to have greater problems in Nigeria than they had here and they were not in need of specialist treatment.

20) In response the first appellant explained that his son's arm was injured at birth. His problems with his arm were raised by his school in the UK and his son attended the doctor. He was sent for x-ray and there was found to be nerve damage. This affects his ability to lift his hand. It had improved with therapy. He had been referred to a new department and a further appointment had been made.

21) The first appellant reiterated that his daughter was receiving vaccination against Hepatitis and another vaccination was due at 3½ years of age. The first appellant further explained that he came to the UK to study and as time went by events unfolded. He did not foresee his present situation which was not of his making. There was a risk of his wife contracting liver cancer. Her Hepatitis had not been tested or diagnosed in Nigeria.

Discussion

22) The Judge of the First-tier Tribunal may rightly be criticised for failing to check and revise his determination prior to its promulgated. The findings made by the judge and the reasons expressed are, however, not unintelligible. The determination is a poor advertisement for the work of the First-tier Tribunal but it does not necessarily follow from this that it contains an error of law.

23) The Judge of the First-tier Tribunal did not follow the two stage approach set out in MF (Nigeria) [2013] EWCA Civ 1192 and did not look at paragraph 276ADE or Appendix FM of the Immigration Rules. These provisions were, however, addressed by the respondent in the reasons for refusal given in respect of the first appellant. In the view of the respondent the first appellant would not succeed under these provisions. The grounds of appeal to the First-tier Tribunal did not rely specifically upon Appendix FM and it may be inferred that the judge accepted that the appeal would not succeed under the Immigration Rules. On this basis the judge would have been justified in considering the appeal under Article 8 outwith the Rules, as he was asked to do in the grounds of appeal.

24) In this regard the judge considered the family's circumstances and the best interests of the children and found that removal would not be disproportionate. As Mr Mangion acknowledged, the judge considered the Razgar questions, although not in the correct

order. The judge clearly recognised that the significant issue was that of proportionality and directed his findings and reasoning to this.

25) The question arises as to whether the judge had proper regard to the medical evidence. The judge referred to the second appellant as being a carrier of Hepatitis B. He had before him the doctor's letter at page 4 of the appellant's bundle but did not refer specifically to the test in respect of the second appellant's fibrocystic breast or to a chronic skin condition from which she suffers. So far as the skin condition was concerned, the letter records that this had settled completely with appropriate treatment. The second appellant now uses a gel for dry skin. The issue was not expected to recur or be a problem in the future. The anticipated breast examination was said to be unlikely to need any treatment because there was no direct family history of breast cancer. At the time of the hearing before me the test was still awaited but there was no reason to question the opinion set out in the doctor's letter at page 4 of the appellant's bundle.

26) The news items submitted to me in relation to treatment for Hepatitis in Nigeria were not before the Judge of the First-tier Tribunal. I do not consider they would have made a material difference to his findings. It is reported that Hepatitis is spreading and that the main danger from it is that many people are unaware that they are carriers. By the time symptoms begin to appear the liver has suffered severe damage. In the case of the second appellant, however, she had been diagnosed in this country as a carrier. The judge's finding was that the disease is well controlled in the second appellant and there was no prognosis that would be detrimental to her general health. She would require regular reviews but the judge was satisfied that the condition could be contained and that adequate care would be available. On the basis of the evidence this was a finding the judge was entitled to make. One of the news items produced before me referred to neglect of the health sector in Nigeria and the tendency of political leaders and their families to go abroad for treatment but it does not follow from this that treatment would not be available in Nigeria.

27) As far as the fourth appellant is concerned, the judge had before him a letter from the GP dated 7 October 2013. This refers to eczema, which it is said tends to be a childhood illness and there was certainly no ongoing or major skin condition. She had had a full schedule of Hepatitis B vaccinations and blood tests showed a good response to these. She is not a carrier of Hepatitis herself. She was due to have a fifth dose of Hepatitis B at the age of 3½ years along with pre-school boosters in the community. These could be taken wherever the family was living. No further investigations or blood tests were required as this was just a precaution because of maternal Hepatitis B.

28) As Mr Mangion submitted, the medical conditions experienced by the members of the family fall far short of the threshold for the appeals to succeed under Article 3. The evidence indicates that treatment and monitoring for Hepatitis B would be more costly in Nigeria than in the UK but there was evidence on which the judge was entitled to find that treatment would be available.

29) Having assessed the medical evidence, the judge considered the best interests of the children, which were to remain with the family unit as a whole. The children would be able to adapt to a return to Nigeria. The judge was entitled to reach this conclusion, having regard to the decision of the Supreme Court in Zoumbas [2013] UKSC 74.

30) Although there are significant criticisms which may be made of the determination, particularly in relation to the judge's failure to revise and correct his text, the criticisms do not amount to an error of law such that the determination should be set aside. The conclusions reached by the judge were sustainable on the basis of the findings made and the reasons expressed.

31) There is a further question as to the validity of the appeals in respect of the second, third and fourth appellants. As no point has been taken in the course of the appeal by the respondent on this matter and as the appeals have anyway been dismissed, I do not consider it is necessary to consider this matter further.

Conclusions

32) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

33) I do not set aside the decision.

34) The First-tier Tribunal did not make an anonymity direction. Having regard, however, to the ages of the children and the medical evidence I consider it would be appropriate for such an order to be made in terms of Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 preventing the publication of any material identifying the appellants.

Signed Date

Judge of the Upper Tribunal