IAC-AH-VP-V1

Upper Tribunal (Immigration and Asylum Chamber) Appeal Numbers:

IA/16412/2014

IA/16448/2014
IA/16456/2014
IA/16477/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 October 2015	**On 10 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

(1) AH
(2) FJ
(3) AJ
(4) AJ
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Mold (Counsel instructed by Daniel Aramide solicitors)
For the Respondent: Miss J Isherwood (Home Office presenting officer)

DECISION & REASONS

1. The parties are as described in the First-tier Tribunal although the respondent pursues the appeal in the Upper Tribunal. This is a hearing de novo.

2. The decision and reasons in the First-tier Tribunal (Judge Shamash) promulgated on 19 March 2015 has been set aside. The Upper Tribunal before (Deputy Upper Tribunal Judge A M Black) found material errors of law for reasons set out in a decision promulgated on 17 September 2015. On that date the Upper Tribunal directed that the appeal be heard afresh to include properly reasoned findings to be made in relation to paragraph 276ADE(1)(vi) and under Article 8.

Proceedings

3. This matter was listed before me for a hearing de novo. The Appellants Mrs AH and her husband Mr FJ gave evidence before me, the details of which are set out in the Record of Proceedings and has been taken into account by me in reaching my decision. The parties each relied on a bundle of evidence produced for the hearing before the First-tier Tribunal and there was no additional evidence adduced.

Evidence of AH

4. The witness relied on her statement dated 6 November 2014. She confirmed she was expecting another baby due in April 2016. She and the family were living in her uncle's house where they contributed to bills. She was not presently employed but was doing cleaning and childcare work for which she was paid in cash. Their income was variable. Her husband was similarly employed on an ad hoc basis as a handyman and together they were able to pay for the bills and food and cover the costs of the children. The children were now in school; one child was in year 3, doing well at school, integrated into UK life. She does not understand Nigerian and will not eat Nigerian food. The youngest is in nursery. The appellant has parents in Nigeria but they are on poor terms because they disapproved of her husband. She described considerable difficulties in surviving and obtaining employment on her own in Nigeria. Her husband was helped to go to France and then onto the UK. There are no family members in Nigeria willing to provide them with help. They still owe money to people who lent them funds that they used to pay for agents who assisted in their departure from Nigeria. They would not be able to ask for further support from those people. Employment in Nigeria was not available and it was difficult to obtain casual work in Nigeria. They would not be able to find the same work in Nigeria.

5. In cross-examination it was put to the witness that in evidence before the First-tier Tribunal she had confirmed that both children spoke Yoruba, ate Nigerian food and attended a Nigerian church. The witness confirmed that she spoke Yoroba to her daughter but she would not speak it in reply and she refused to eat Nigerian food. She confirmed that she attended the

mosque and would take the children along with her. She confirmed that the main reason for wishing to stay in the UK was because of her children and the fact that in the UK there were people they could rely on and ask for help. She confirmed that they had not paid for the children's education, NHS treatment and that she had not got permission to work in the UK. Her husband had paid for his studies but had not yet completed his qualification under the Open University scheme. The witness confirmed that she had not made any claim for asylum and she accepted the family were in the UK illegally. They were desperate at the time and moving to the UK was the only option open to them. The witness further confirmed that she did not have a national insurance number but had been provided one by a person she knew in order to allow her to work. She had since ceased to be in employment. She confirmed that her uncle was aware of their situation and he had responded by offering the family a place to stay in the UK. He had not returned to Nigeria and had no ties there. She confirmed that members of her prayer group at the mosque were Nigerian and that they had provided her with contacts to enable her to obtain cleaning and childcare work. She stated that those same people would not be able to assist her on return to Nigeria.

6. She was asked about the reference on the birth certificate to her husband's occupation as being a security officer. She stated that this had been put down in error and that he had not worked as a security officer whilst in the UK.

7. She would not be able to resolve the family difficulties on return to Nigeria. Her father was in a polygamous marriage arrangement and although there were siblings they were not related to her biological mother.

8. In answer to a question from the Tribunal the witness confirmed that she had not made inquiries about schools in Nigeria. She accepted that English was spoken and was the general language in Nigeria. She confirmed that she had HND qualifications and her husband has a BSc in Political Science from Nigeria.

Evidence of FJ

9. The witness relied on his statement. He confirmed that he had graduated some twelve years ago, had not been able to obtain employment in Nigeria and would not be able to survive there. He was currently able to make a living as a "multipurpose operator" in the UK doing all forms of menial work. There would not be similar jobs available in Nigeria. He described how the children had no real understanding of Nigeria and for that reason they would not be able to survive in that society. He stated that as he had no job, no home and no resources he would not be able to start a new life in Nigeria and the children would not be able to go to school. He had made an attempt to regularise their stay in the UK. He had consulted a lawyer but he had been duped by the lawyer who had

taken their money. Since then they wanted nothing further to do with legal representatives.

10. The witness confirmed that he had no parents or siblings in Nigeria. He had some contact with people in Nigeria through the internet but he would not be able to approach them for help with his children. He had a BSc in Political Science obtained in Nigeria and in the UK was studying development management. He had completed two modules and still had two modules to go prior to obtaining an MSc in Management. He stated that there were no similar courses available in Nigeria. He stated that the family would be destitute if they were to return to Nigeria. The children spoke mainly in English but had picked up some of the Nigerian dialect as he would tell them off using Nigerian words.

Submissions

11. The Home Office relied on the reasons for refusal. She submitted that the parties had been contradictory evidence in particular concerning whether or not the children spoke Yoroba and participated in the Nigerian prayer group at the mosque. The two witnesses had also given contradictory evidence about their lives in the UK concerning the children and their level of integration.

12. It was submitted that none of the family were entitled to be in the UK and they expected to get an education and health facilities to which they were not entitled. Both witnesses had sought employment in the UK knowing that they were illegally in the UK. The family were a unit in the UK and could return to Nigeria as a unit and rely on the skills obtained in the UK and obtain further employment. There was no evidence of real integration in the UK – no evidence from their uncle and no evidence from the people who "employ" them. The language in Nigeria is English and the family had associated with other Nigerians at the prayer group. There was no reason why the children would not be able to extend those ties, given that they had mixed with Nigerians in the UK, on return to Nigeria.

13. The children failed under the Immigration Rules.

14. Ms Isherwood submitted that under Article 8 the situation was similar to **Zoumbas** at paragraph 24 (but without any criminal element). The family were illegally in the UK and the parents were highly educated and the children would have their needs met by their parents and the family remaining together. The eldest child was only just 7 years. There was no evidence to show any detriment to the health or educational needs of the children or otherwise. Reliance was placed on **EV (Philippines)** at paragraph 32 in relation to the best interest of the children in which it was submitted that returning to Nigeria as a family would be in their interests and they could continue with their education there. The need for immigration control outweighed the best interest of the children. As overstayers the public interest weighed in favour of a fair and consistent

immigration system. The appellants had come to the UK for economic reasons, failed to claim asylum and had been willing to lie to the authorities in order to get work. These were factors to be considered. There were no exceptional circumstances or particular factors of a compelling or compassionate nature and it was entirely reasonable to expect the children to return to return to Nigeria with their parents. No other evidence had been adduced in support of any private life in the UK. The family wished their children to be educated in the UK. Reliance was placed on **AM (Paragraph 13)** where it was held that the mere presence of a child in education in the UK was not a trump card. The family still had connections in Nigeria, neither parent has ever had any leave to remain and the children do not qualify.

15. Mr Mold for the appellants submitted that the starting point was the third appellant who was 7 years old and who was a qualifying child under paragraph 276ADE(iv) as she had lived in the UK for seven years. He accepted that it was difficult to argue that the family had no ties in Nigeria. Through the perspective of the child it was necessary to consider whether there were significant obstacles to reintegration in Nigeria. The witnesses had given evidence and explained their difficulties and circumstances in which they came to the UK and stated that in the event of a return to Nigeria they would be destitute. The evidence was credible. There was no legal basis for relying on evidence given before the hearing in the First-tier Tribunal as regards the children and their Nigerian connections. It was clear that they understood Yoroba but did not speak it. It was accepted that schooling would be available to the children in Nigeria but that the family had no support network or base to start off from in Nigeria; no home, no job and no possibility of finding work. It was argued that these amounted to very significant obstacles on return and which impacted on the best interest of the children.

16. Mr Mold submitted that the **Bossadi** argument was relevant only at the second stage and did not consider it relevant with reference to the Immigration Rules.

17. In the event of the Tribunal considering the second stage he submitted that there was no evidence to show that the parties had received government grants, benefits or tax credits. They had obtained benefits via NHS and education but otherwise they had provided for themselves and had accepted that they were in the UK illegally. It was submitted that the appeal be allowed on immigration grounds.

Finding of Fact and Conclusions

18. At the hearing before me Mr Mold proceeded on the basis that the appeal should succeed under the immigration rules given that the eldest child was a “qualifying child“ having resided in the UK for 7 years, that it would be in her best interests to remain in education in the UK and that there

would be very significant obstacles to her integration in Nigeria as the family would be destitute on return.

19. I heard evidence from the main appellant and her husband. I found that there were inconsistencies in their evidence. In particular I was unable to rely on it as to the level of integration in the UK and ties in Nigeria. It is common ground that the family have lived and worked in the UK illegally and that the children were born here when their parents had no lawful status. I find no evidence of any private life for either of the parents save for the length of residence in the UK. There was no evidence from any of the people that they claimed to have worked for in the UK and no evidence of any other links or ties, for example friends, church or school. In any event whatever ties exist were developed in the knowledge that they had no lawful status in the UK.

20. I conclude that the main appellants are unable to show that they can meet the requirements of the immigration Rules as partners or parents under Appendix FM and or private life under paragraph 276 ADE. The immigration rules dealing with qualifying children require that the child has lived in the UK for a continuous period of 7 years. The child only reached 7 years in August of this year and is only just qualifies under 276ADE(iv) at the date of hearing before me. There is no basis for any argument that family life would be breached either inside or outside of the Rules as the family would be returning to Nigeria as a unit and given the ages of the children it is in their best interests to remain with their parents.

21. I am satisfied that it is reasonable for the child and family to return to Nigeria, and that the second limb of 276ADE(iv) is not met. I find that the children are able to communicate in English which is spoken in Nigeria and also have some level of comprehension of the Nigerian dialect Yoruba, but am satisfied that they would be able to develop their language skills in Nigeria where they could initially communicate in English. I find no evidence to show that the children would not be able to get an education in Nigeria and no evidence that at this stage of their education there would be any significant disruption such that a move would be contrary to their interests. The youngest child is in nursery and the oldest in primary school. I have considered section 55 Borders, Citizenship & Immigration Act 2009 including their ages, the stage of education and their ability to integrate in Nigeria. Both parents are Nigerian and it is clear that the family maintain some cultural links in the family home for example cooking Nigerian food and speaking in Yoruba. Also the children attend the Mosque with their mother where again they are associating and socialising with other Nigerians. It was conceded by Mr Mold that it could not be argued that the family had no ties in Nigeria and I agree.

22. Mr Mold submitted that the family would effectively be destitute on return as they would have no home and no means of getting funds from

employment. I fully accept that initially the family would experience difficulties, but I also take into account that when they came to the UK they had nothing and no contacts and yet they have managed to survive thus far. There was credible evidence that Mr FJ maintained contact on the internet with people in Nigeria and AH has family in Nigeria, albeit relations have been strained in the past. I find therefore that they would be able to make contact with those people and seek help for the initial period of return until they were able to make more solid links. I did not accept that it would not be possible for the family to seek help from the Nigerians that have helped them in the UK and some of whom must reasonably have connections in Nigeria. The parents are both familiar with the country, language and both are educated to degree level. They would be able to reintegrate without too much difficulty. I do not accept that casual work is not available in Nigeria.

23. I find no evidence of any compelling or compassionate circumstances for either the parents or the children in relation to health , education or otherwise and there is no justification or basis upon which I can consider the appeal outside of the rules. If I am wrong I am satisfied that Article 8 family life is not engaged because the family will be returning as a unit. I find no evidence of any private life for any of the appellants in the UK, save for the length of residence for FK who entered in 2004 and AH in 2007. There was no evidence of any relevance from the children to establish private life was engaged aside from attending school, which is not itself sufficient. However, even if the length of residence is enough to engage Article 8 I find that any interference cannot be proportionate having regard to the weight that must be attached to the public interest in immigration control given that the residence has been unlawful thorough out. There in nothing disproportionate or unreasonable about the children moving to Nigeria with their parents which would involve changing school and education. I am satisfied that they are young enough to be able to settle in Nigeria and in the circumstances this would be reasonable. There would be no significant obstacles to their integration. Although presenting some initial difficulties I find that they would not be destitute given the connections that their parents have in Nigeria. In reaching my decision I have taken into account the following caselaw: **EV (Phillipines)[2014] EWCA CIV 874, AM (S117B) Malawi [2015] UKUT 260 (IAC)** and **Zoumbas 2013 UKSC 74 and Bossadi(paragraph 276ADE;suitability;ties)[2015] 00042 (IAC).** I have also had regard to the factors in section 117 of the 2002 Act (as amended), in particular I rely on section s117B(1)(3)(4)(5)(6).

Notice of Decision

The appeal is dismissed on Immigration grounds.

The appeal is dismissed on human rights grounds

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. There are children in the proceedings which justifies anonymity.

Signed Date 9.11.2015
GA Black

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 9.11.2015
GA Black

Deputy Upper Tribunal Judge G A Black