Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number**
IA/23025/2014

IA/23027/2014

THE IMMIGRATION ACTS

Heard at Centre City Tower	**Decision and Reasons Promulgated**
On 7th April 2015	**On 27th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

O B O
E O F
(ANONYMITY DIRECTION MADE)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms M Hannan (solicitor, Corban Solicitors)
For the Respondent: Mr N Smart (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. In this determination the term Appellant refers to OBO and her son who were the Appellants before the First-tier Tribunal, the term Respondent refers to the Secretary of State for the Home Department. As those are the terms that applied in the First-tier Tribunal decision I have retained them to avoid doubt. In these proceedings in the Upper Tribunal the Respondent challenged the decision of the First-tier Tribunal as explained below.

2. The First Appellant was born on the 23rd of March 1978 and is a national of Nigeria. She arrived in the UK illegally in December 2004. The Second Appellant is the son of the First Appellant, was born on the 1st of May 2003, he arrived in the UK, also illegally early in February 2007 (paragraph 25 of the First-tier Tribunal decision).

3. The history of the Appellants is set out in the First-tier Tribunal decision but in summary both have remained in the UK since then, the First Appellant was convicted on the 18th of September 2013.

The application under appeal was made on the 28th of May 2013, it was refused with a right of appeal following a review.

4. The case was heard by First-tier Tribunal Judge Bell on the 4th of September 2014 at Bennett House in Stoke on Trent. In a decision promulgated on the 12th of September 2014 the appeals were allowed. It was found that the First Appellant could not meet the suitability requirements of the Immigration Rules by reason of the conviction of September 2013. So far as the Second Appellant was concerned the Judge found that he had been living in the UK for 7 years at the date of the hearing and could qualify to remain as a child because of the First Appellant's status. The appeal was allowed under paragraph 276ADE.

5. The grounds argued that the Judge had erred in finding that the Second Appellant met the requirements of paragraph 276ADE in that it was not unreasonable to expect him to return to Nigeria. Permission was granted on the basis that the Judge had not considered the cost of the future education of the Second Appellant when he was not entitled to that education.

6. At the hearing Mr Smart for the Secretary of State applied to amend the grounds of appeal. The basis of the application was that the Judge had erred in finding that paragraph 276ADE applied. The submission was based on the terms of paragraph 276ADE which requires that the applicant has been in the UK for 7 years at the date of the application. By rule 34G an application is made on the date of posting.

7. Having found that the Second Appellant entered the UK in February 2007 and the application having been made in May 2013 he did not meet the basic requirements of the rule. That infected the article 8 assessment. For the Appellants it was submitted that this was irrelevant and the matter was at my discretion.

8. At the hearing I indicated that I found that the Judge had erred. It is clear from the terms of the rule set out in paragraph 276ADE that an Appellant's presence is to be measured between arrival and application and on the unchallenged findings relating to the Second Appellant's arrival in the UK and the clear date of application the Second Appellant did not have the required time in the UK. Accordingly I set aside the decision in order to remake it.

9. At that point I invited submissions on how the decision should be remade. I indicated that I did not feel that further evidence would be required and this was accepted. The submissions are set out in the Record of Proceedings. In summary the Home Office relied on the Refusal Letter and also adverted to the Appellant's conviction. The Appellant and her son would return to Nigeria together. In the social worker's report there was reference to the Appellant having no relatives in the UK in contrast to her own reference to an older sister. It was not clear who had looked after the Appellant's child in her absence and it was submitted that she was unreliable. Relying on Azimi-Moyed they would return together and the First Appellant would assist with his re-integration.

10. For the Appellant reliance was placed on the skeleton argument and on the First-tier Tribunal decision. It was submitted that the Second Appellant had entered when he was 3 or 4 and has now been in the UK for 9 years (actually 8 years), he had made friends in his time here. The Judge had not said that the Appellant was not credible, her witness statement should be considered and she had suffered domestic violence from her husband. Her sister lives in the UK and she can obtain support. It was in the best interests of the child to remain and reliance was placed on ZH (Tanzania) [2011] AC 166, she had no home or work to go back to and removal would have a detrimental effect on him.

11. By section 55 of the 2009 Act the best interests of a child in the UK are a primary consideration. They are not a paramount consideration and a child's best interests will not necessarily override other considerations. Also applicable is section 117B of the 2002 Act which provides that the maintenance of immigration control is in the public interest. By section 117B(4) little weight is to be attached to a private life formed when a person is in the UK illegally. Removal is not required by subsection (6) where the person has a genuine relationship with a qualifying child and it would not be reasonable to expect the child to leave the UK. Having lived in the UK for over 7 years (there being no reference in the statute to the date of application) the Second Appellant is a qualifying child.

12. The background to this case is clearly relevant. The Appellant entered the UK illegally leaving her child behind in Nigeria until his illegal entry to the UK could be facilitated. Neither has been in the UK legally at any stage and in that time he has received education to which he has not been entitled. If he remains then that is a burden which would have to be borne by the UK taxpayer.

13. The situation in which the Appellant and her son find themselves is entirely the result of the decisions and actions of the Appellant. It may be that she suffered at the hands of her former husband but unless it could be shown that she would be in danger in Nigeria with no adequate protection and/or the inability to relocate internally then she is not, and has never been in need of international protection. The clear implication is that the First Appellant is an economic migrant who has come to the UK and later arranging for the Second Appellant to join her for the opportunities available that may be understandable but does not confer any rights as such.

14. In addition to that the First Appellant was convicted on the 18th of September 2013 in relation to a fraudulent document and received a suspended sentence. It was for that reason that she could not meet the suitability requirements. There is the inconsistency between the social worker's report that she has no relatives in the UK and the statement that her sister lives here. In any event even if her sister is living in the UK and may provide her with some support there is no evidence of dependency that would engage article 8 and the case has not been argued on that basis.

15. If removed the Appellants would be returned to Nigeria together and the First Appellant would be able to assist the Second Appellant in his reintegration. It is said that the First Appellant has no support there but the background suggests otherwise. She left the Second Appellant in Nigeria when she first came to the UK. That, incidentally, undermines claims of danger arising from domestic violence but it suggests that support is available to her, there is no evidence that the support relied on then is no longer available to her and her son.

16. Obviously if the Appellants were to return to Nigeria reintegration would involve dislocation and adjustment. However if the Appellants remain in the UK and chose to move within the UK, for example to Penzance or Berwick upon Tweed they would face some of the same difficulties. I accept that circumstances in Nigeria, even with support, would be more challenging for them but the First Appellant has the advantage of having spent most of her life there and she would be able to assist the First Appellant.

17. It is also true that the opportunities and support available to them in Nigeria may be of a lower standard than in the UK but that is not determinative. Although the Appellants rely on the case of ZH (Tanzania) the more appropriate authority is Zoumbas [2013] UKSC 74. In that case it was noted that while it might be in a child's best interests to remain in the UK as education etc might be better in the UK things were not equal where the children were not British nationals and did not have a right to be in the UK or to remain here.

18. So far as the Second Appellant is concerned is reasonable to expect him to return to the country of his nationality and birth? I note that he is regarded as vulnerable and has lived something of an unsettled life, largely the result of decision taken by the First Appellant. What would be unreasonable about removing him to Nigeria? He would lose the educational opportunities and access to the health care system of the UK but he has no right to access these anyway and his use of these to date has been when he had no right. It is in the public interest that immigration control should be enforced and his mother sought to evade that by facilitating her own and his illegal entry. She has exacerbated matters with her criminal offending.

19. The matters relied on by the Judge at paragraphs 33 and 34 of the decision do not begin to show that his removal would be unreasonable, given the observations in Zoumbas even without the error of law identified above I would have found an error in this part of the determination. I would also add that as was observed in Jeunesse states are entitled to expect individuals to comply with the rules and laws that apply to them, something rather lacking from the First Appellant's behaviour, and children are not to be used by adults as a route to evading immigration control.

20. There is nothing in the evidence that shows that it would be unreasonable to remove the Appellant to Nigeria and for that reason I find that the requirements of paragraph 117B(6) of the 2002 Act are not met. I find that their removal would be a proportionate response in the circumstances and the UK would not be in breach of its obligations under article 8 of the ECHR. Accordingly I dismiss the appeals of both Appellants.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I re-make the decision in the appeal dismissing the appeal of the Appellant.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

I make no fee award.

Reasons: Appeals dismissed.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 22nd April 2015