IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/26742/2014
IA/29821/2014
IA/29818/2014
IA/29816/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 February 2015	**On 23 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

OLUFUNMILOLA OGANLA
ABDUL AZEEZ OLADIPUPO OGANLA
MOHAMMED FARRUK ATOLANI OGANLA
OYINKANSOLA MOFISAT FEYISAYO OGANLA
(ANONYMITY ORDERS NOT MADE)

Respondents

Representation:
For the Appellant: Mr P Nath, Home Office Presenting Officer
For the Respondents: Mr J Waithe of Counsel, instructed by Raj Law Solicitors

DECISION AND REASONS

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1. These are linked appeals against the decisions of First-tier Tribunal Judge Lal promulgated on 11 November 2014 allowing each of the appeals of Ms Olufunmiloa Oganla, Mr Abdul Azeez Oladipupo Oganlo, Mr Mohammed Farruk Atolani Oganla, and Ms Oyinkansola Mofisat Feyisayo Oganla, against the decisions of the Secretary of State for the Home Department dated 6 January 2014 to remove them from the United Kingdom.

2. Although before me the Secretary of State is the appellant and the Oganlas are the respondents, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to the Oganlas as the Appellants and the Secretary of State as the Respondent.

Background

3. The Appellants are nationals of Nigeria. They are a mother and her three children with the respective dates of birth of 8 June 1966, 17 September 1992, 14 January 1996 and 19 April 2004.

4. The immigration histories of the appellants are helpfully set out at paragraphs 1 and 2 of the decision of the First-tier Tribunal in the following terms:

> "The Appellants entered the UK on 15 July 2006 on visitor visas. The Second and Third Appellants were 14 and 13 years of age and the Fourth Appellant was 2 years of age at the time of entry. They have not held any other form of leave. It appears that an application was made in March 2010, which was refused in June 2010 but the matters were not taken to appeal."
>
> (I pause to interject that it appears that there may have been no appealable decision at that time.)
>
> "On 24 September 2010 Greenland Lawyers asked for the matter to be reconsidered. The Respondent was "chased" by way of letter on 11 January 2012 to which they replied by way of response dated 20 January 2012 stating that they will do everything possible to consider this. A further chaser letter was sent on 26 February 2013 and the current refusal is dated 6 January 2014."

5. The Secretary of State's removal decisions were necessarily informed by the reasons given in the 'reasons for refusal' letter ('RFRL') of 6 June 2014. That letter is a matter of record on file and is known to the parties and it is unnecessary for me to rehearse its content here. Suffice to say that it is a letter that goes into some detail in attempting to set the individual circumstances of each of Appellants within the framework of the Immigration Rules and in particular Appendix FM and paragraph 276ADE.

6. The Appellants appealed to the IAC. The First-tier Tribunal Judge allowed the appeals for reason set out in his decision.

7. The Respondent sought permission to appeal which was granted by First-tier Tribunal Judge Astle on 5 January 2015.

8. The Appellants have filed a Rule 24 response under cover of a letter dated 20 January 2015 resisting the Secretary of State's challenges to the decision of Judge Lal.

Consideration

9. The First-tier Tribunal Judge’s decision addresses the Appellants’ cases in the following way. As already indicated the opening two paragraphs refer to the immigration histories; the third paragraph records that there was no dispute as to the chronology between the representatives - both of Counsel - who appeared for the parties before the First-tier Tribunal.

10. The Judge then summarised the basis of the refusal making reference to the decision letter and its reference to the Immigration Rules (paragraph 4 of the determination). At paragraphs 5–8 the Judge sets out in brief summary the evidence that he heard at the hearing including, it is to be noted, evidence from the Fourth Appellant (paragraph 7), and also made reference to supporting evidence (paragraph 8). The Judge then makes reference to the submissions of the parties (paragraphs 9 and 10), and then comes on to the substance of his decision.

11. At paragraph 11 the Judge states:

> “The Tribunal first approached the matters by considering the Rules. It is satisfied that the First, Second and Third Appellants cannot satisfy the Rules and indeed Mr Oke [who appeared for the Appellants before the First-tier Tribunal] accepted that this was the case. In respect of the Fourth Appellant neither side disagreed that the Fourth Appellant did qualify but the issue was one whether it was reasonable for her to go back.”

12. The concession in respect of the Rules for the First, Second and Third Appellants is also repeated at paragraph 15, and I will come on to this in due course.

13. So far as the Fourth Appellant is concerned, the terminology used by the Judge is slightly confusing in that the phrase “*did qualify*” might be read as being equivalent to ‘met the requirements of’. In context, of course, this cannot be what the Judge meant because he went on to consider the question of reasonableness. There is, however running, through this decision a degree of confusion as to exactly what Rules were applicable if any, and why.

14. Be that as it may, at paragraphs 12 and 13 of the determination the First-tier Tribunal Judge addresses the circumstances of, in particular, the Fourth Appellant in the context of the reasonableness of expecting her to return to Nigeria, and reaches a conclusion set out at paragraph 14 in her

favour. It is in respect of paragraphs 12 and 13 that the Respondent focuses her challenge before the Upper Tribunal.

15. The Judge continues with his determination from paragraph 15 - as I said previously, repeating the concession in respect of the Rules for the First, Second and Third Appellants - and thereafter going on to conduct a freestanding Article 8 evaluation with reference to the test in **Razgar**, and in due course concluding that the First, Second and Third Appellants should all succeed under Article 8.

16. The Respondent challenges the decision of the First-tier Tribunal essentially on the basis that the Judge erred on the issue of reasonableness in respect of the Fourth Appellant, and necessarily that the Article 8 assessment in respect of the First, Second and Third Appellants was, as it were, 'infected' by the error in respect of the Fourth Appellant.

17. The grounds essentially plead two matters on the issue of reasonableness, identified at paragraphs 1(b) and 1(c) of the grounds. Paragraph 1(d) is a more generalised criticism of the approach to reasonableness which in many respects, as acknowledged by Mr Nath, encompasses the more specific challenges pleaded at subparagraphs (b) and (c). The other paragraphs are essentially by way of setting the scene and/or making a final assertion as to error: it is in respect of subparagraphs 1(b) and 1(c) that the Respondent is specific in the challenge to the Judge's assessment.

18. The challenge at paragraph 1(b) of the grounds is in these terms:

> "The SSHD respectfully submits that the FTJ's assessment of reasonableness is misguided: the FTJ finds that in the absence of support it would be unreasonable for [the Fourth Appellant] to return to Nigeria, but does not consider the support that her immediate family could give her nor why her father's family would be unable to offer support."

19. In my judgement that ground is not well-founded. It seems to me clear that at paragraphs 12 and 13 the Judge expressly turned his mind to the issue of support both more generally in Nigeria from the wider family and also from the immediate family.

20. I note the following at paragraph 12:

> "The Tribunal accepts the account that this particular family unit has no wider or extended family support in Nigeria because of this history. There is no evidence to suggest anything else."

21. I also note the following at paragraph 13:

> "The Tribunal is satisfied that on the facts of this particular case it would be unreasonable to expect the Fourth Appellant to leave the UK in the absence of any wider or other support in Nigeria and even if returned with her immediate family."

22. On the face of it the judge has expressly turned his mind to those matters that it is suggested in paragraph 1(b) of the grounds that he disregarded. In those circumstances I reject that particular challenge.

23. Paragraph 1(c) of the grounds is in these terms:

> "The FTJ also finds that there are scales as to how 'Nigerian' a family may be, but does not establish why this family is any less 'Nigerian' than other Nigerian families - it is submitted that the FTJ has relied on an unsound premise to establish unreasonableness without evidence or authority."

24. Paragraph 13 is relevant in this regard. I have already quoted above one passage from it but the paragraph in its full terms is as follows:

> "The Tribunal notes that any assessment of cultural mores is fact specific. Some Nigerian families may be more "Nigerian" than "British" in terms of outlook and association and vice versa. The Tribunal is satisfied from the oral and documentary evidence that the Appellants and in particular the Second, Third and Fourth Appellants are well integrated into British life. It is not just a calculation of the number of years but whether those years encompass the formative and devopmental periods in the life of a young person in respect of their own identity. The Tribunal is satisfied that on the facts of this particular case it would be unreasonable to expect the Fourth Appellant to leave the UK in the absence of any wider or other support in Nigeria and even if returned with her immediate family. The Tribunal has at all times considered this issue with regard to Section 55 and the best interests of this child in any event."

25. It is plain within that paragraph that the Judge had in mind the decision in the case of **Azimi-Moayed [2013] UKUT 197**. It is perhaps in those circumstances inappropriate for the Secretary of State to suggest that the Judge has not had reference to appropriate authority, notwithstanding that the case is not cited by name. Equally it seems in my judgement that the Judge adequately explains why he concludes that the Fourth Appellant in particular was "*well integrated into British life*" by reference to the circumstances of her having spent eight years in the United Kingdom, from the age of 2 until the age of 10, and also by referencing the evidence that he had heard. In this context paragraph 7 of the decision is germane, where the judge refers to the oral evidence given by the Fourth Appellant - who indicated that she was head girl at her primary school and looking forward to going to senior school.

26. I find in those circumstances, notwithstanding the submission by Mr Nath today that the Judge's reasoning in this regard was not clear, that adequate reasons were provided by the Judge, and this is to be considered in the context of the Respondent not being able to identify any countervailing factors to show that a child such as the Fourth Appellant could not be characterised as being 'well integrated into British life'.

27. For completeness it should be noted that at paragraph 14 the Judge also has regard to the element of delay in the process of reconsidering the Appellants' applications pursuant to the request so to do made in September 2010 - which did not result in an appealable decision until June 2014. The Judge refers to this as a relevant factor in considering the reasonableness of the Fourth Appellant's return at the present time.

28. Accordingly in those circumstances I also reject the challenge contained at paragraph 1(c) of the Respondent's grounds.

29. It does seem to me that essentially the grounds amount to a disagreement with the conclusions of the Judge and do not identify any express errors of law. The Secretary of State's challenge as pleaded therefore fails in respect of the Fourth Appellant.

30. In respect of the other Appellants, as I have indicated, the Respondent's challenge to the assessment of Article 8 is very much premised on the claimed error in respect of the Fourth Appellant. In this context it is appropriate to note that the First-tier Tribunal Judge does identify at paragraph 20 features of the Appellants' cases that might be considered to be exceptional. In particular he mentions the circumstances of their departure and arrival, which is a reference to the demise of the First Appellant's husband, the father of the other Appellants, after their arrival in the UK as visitors. He also refers to the level of integration, and the delay on the part of the Respondent.

31. Accordingly I also reject the challenge raised in the grounds under Article 8 in respect of the First, Second and Third Appellants.

32. That said, there is a matter that has caused some consternation during the course of the hearing and discussion with the representatives today, which I have adverted to in my earlier observations, and that is in regard to the applicability or otherwise of the Immigration Rules.

33. The Judge states at paragraph 14 that the Fourth Appellant's appeal was to be allowed under the Immigration Rules, but does not identify which Rule. It seems likely that he had in mind paragraph 276ADE of the Immigration Rules, although it is not abundantly clear; if so – as seems likely – his particular focus was on 276ADE(1)(iv).

34. However, it is not entirely clear to me why it was considered that this Rule was applicable bearing in mind that there is a requirement that the applicant have been living continuously in the UK for at least seven years at the date of the application. The only identifiable application in these proceedings is that made in March 2010 at which point the Appellants would have been in the United Kingdom for fewer than four years.

35. Equally it is confusing in that, although the Judge acknowledges, and indeed the parties' representatives appear to acknowledge, that the Rules

were engaged in respect of the Fourth Appellant, it was conceded by the representatives - and the concession accepted by the Judge - that the Rules did no apply in respect of the First, Second and Third Appellants. It is difficult to see why, if the Rules applied to the Fourth Appellant, her mother could not have benefited from the ‘parent route’ under the Rules. Indeed, in the RFRL the only reason that the mother did not succeed under the ‘parent route’ was because the Respondent considered the removal of the Fourth Appellant to be reasonable. Necessarily once that premise is eroded by reason of the Judge’s favourable findings, insofar as the Rules were applicable there was no obstacle to the mother satisfying the requirements.

36. In the event, however, it seems to me ultimately this is a matter of form rather than substance. Moreover these issues proceeded by way of agreement between the parties before the First-tier Tribunal, and yet further the Secretary of State has not made any challenge in this regard in the grounds, and there has been no cross-challenge that the Rules should have applied to the mother or any of the other Appellants.

37. In those circumstances I am not minded to interfere in the decision of the First-tier Tribunal on that basis, notwithstanding the consternation as to the lack of clarity as to the actual framework within which the appeal was being considered, and why.

Notice of Decisions

38. The decisions of the First-tier Tribunal contained no material error of law and therefore stand. The challenge of the Secretary of State is dismissed.

39. Each of the appeals IA/26742/2014, IA/29816/2014, IA/29818/2014, and IA/29821/2014, remain allowed.

40. No anonymity direction is sought or made.

The above represents a corrected transcript of an ex-tempore decision given at the hearing on 18 February 2015.

Signed Date: **23 February 2015**

Deputy Upper Tribunal Judge I A Lewis