



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/26915/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 29th September 2015

Decision & Reasons Promulgated
On 11th December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MS OSARIEME ELIZABETH IYAMU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O L Atuegbe, Solicitor

For the Respondent: Mr A McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria born on 27th October 1984. The Appellant's immigration history is set out in considerable detail at paragraph 3 of the Secretary of State's Notice of Refusal. The Appellant first entered the United Kingdom on 25th December 2001 under a valid visit visa. The appeal that comes before me originates from an application made by way of letter dated 29th October 2011 asking that her case be considered pursuant to the European Convention on Human Rights. That application was ultimately refused by a Notice of Refusal dated 9th June 2014. In reaching such decision the Secretary of State when considering the Appellant's family life accepted that she had been in a genuine and subsisting relationship for at least two years but that the person with whom she was in the relationship, Mr Isichei, was neither a British citizen nor a person settled in the United Kingdom with refugee or humanitarian protection leave and therefore the Appellant failed to meet

the requirements of the Immigration Rules. Consideration was also given to the Appellant's family life as a parent in the United Kingdom under Appendix FM of the Immigration Rules and to her private life.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Parker sitting at Manchester on 18th September 2014. In a determination promulgated on 2nd October 2014 the Appellant's appeal was allowed both under the Immigration Rules and pursuant to Article 8 of the European Convention of Human Rights.
3. On 9th October 2014 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended that the First-tier Tribunal materially misdirected itself in law and that there were no compelling circumstances in the case that are not sufficiently recognised under the Rules and that grant of leave outside the Rules are reserved for the most exceptional cases and should not be used as a means to circumvent the requirements of the Rules which are in themselves a complete code. It was consequently submitted that the Tribunal had erred in law in allowing the appeal under Article 8 and that the decision was not in accordance with the law.
4. On 5th December 2014 Judge of the First-tier Tribunal Grimmatt granted permission to appeal. Judge Grimmatt notes there are errors in the Grounds of Appeal. Firstly the grounds wrongly suggest there are three Appellants and secondly the Respondent asserts that the judge erred in failing to consider whether there were arguably good grounds for considering Article 8. Judge Grimmatt points out that such a test is not however required referring to the authority of *R (MM and Others) v SSHD [2014] EWCA Civ 985*.
5. However, Judge Grimmatt went on to note that the application by the Respondent as to whether the judge was wrong to go on to consider Article 8 was arguable as at paragraph 18 the judge found that the Appellant did not meet the requirements of the Rules but at paragraph 20 of his determination found that she did. There did not appear to be any Rule 24 response served in reply on behalf of the Appellant.
6. The matter first appeared before me therefore for consideration as to whether there was a material error of law on 16th April 2015. I noted that the principal thrust effectively of both legal representatives was that there was a conflict in the determination at paragraphs 18 and 20. Effectively the Appellant's legal representative stated that that was not a material error of law but that the Secretary of State considers that it was. To a certain extent this is an extension of the manner in which the Grounds of Appeal are set out. However I was persuaded by Mr McVeety's arguments that the determination was flawed. There are considerable contradictions to be found in paragraph 18 particularly the fact that there is a finding that the Appellant has no ties to Nigeria when there has been no prior reference within the determination to ties and ties seem to be somehow inextricably linked with the medical evidence. The conflict between the two paragraphs is critical to the determination and as Judge Grimmatt states in paragraph 4 of his grant of permission contradictions in findings at paragraphs 4, 18 and 20 in my view

contained not just an error of law but a material error of law making the decision unsafe.

7. In such circumstances the correct approach was to set aside the decision and to give directions for the rehearing of this matter. However, I was persuaded by both legal representatives that the findings of fact should stand save for the evidence with regard to ties and in such circumstances the correct approach was for me to retain the matter within the Upper Tribunal and to ask the administration to list the matter for rehearing before me on the first available date. Directions were attached regarding that rehearing.
8. The directions I gave were that whilst the decision of the First-tier Tribunal contained a material error of law and was set aside, the findings of fact were to stand save for evidence relating to the Appellant's ties to Nigeria and that there be leave to the parties to submit further witness evidence solely relating to this fact and that the Appellant and the Sponsor do attend for the purpose of cross-examination. I further directed that save for evidence given with regard to the issue of the Appellant's ties to Nigeria the matter be addressed by way of submission only.
9. It is on that basis that the appeal comes back for me for rehearing. I am considerably assisted in that the representatives from the parties are those that appeared before me on the hearing of the error of law. In addition I note that there is a further witness statement filed in accordance with my directions by the Appellant dated 14th July 2015. The Appellant attends court, confirms and adopts that witness statement as her evidence-in-chief.

Evidence

10. Ms Iyamu confirms that she is the only child of her parents and that she never knew her biological father and that she was raised by her mother and stepfather. She appears to have had a difficult childhood and has not seen her mother since 1997. She entered the United Kingdom in December 2001 at the age of 17 along with her stepfather as visitors and he then left her to the care of his friend whom she had never met prior to that time. Her stepfather returned to Nigeria without telling her, leaving a message that he had terminal cancer and that he wished to leave the Appellant in the UK in a secure environment.
11. It was against that tragic background that the Appellant's later teenage years passed. She advises that her stepfather passed away at some point and her host in the United Kingdom relocated to the United States after she had lived with him for two years. The Appellant however settled into education and completed a nursing course and eventually met her partner Mr Victor Bailey Isichei in 2008. The Appellant and Mr Isichei had two children who are now respectively aged 5 and 3. Further her partner has a son who is aged 2 from another relationship. She advises that since she came to the United Kingdom in 2001 she has never returned to Nigeria and that she has no friends, family or relatives there. She states she has no bank accounts, businesses, properties or remembrance of any location in Nigeria and that she has no ties of any forms there. She advises her ties are in the United Kingdom around her children, her partner, her partner's son and her friends and church. She states she has been here

for over fourteen years and this is where she attended high school and university and where she made friends. She comments that the little she remembers of Nigeria gives her trauma and the flashbacks she has makes her depressed for the majority of the time.

12. She is aware that this appeal centres on whether or not she has ties to Nigeria but states that even if she did have relatives there, it would be very difficult to integrate into that society, pointing out that she was made an object of ridicule when she was in Nigeria. She states she has lived almost half her life in the United Kingdom and it was not her own choice to enter this country. She comments that she was brought here with a legitimate expectation that this was a new start and her new home and states that it would be unfair to uproot her from this and to take her back to a past that still haunts her. She further points out that her daughter J has medical problems and that her partner has a son who depends and relies on him for daily support. She asks that the decision of the First-tier Tribunal Judge be upheld.
13. In cross-examination Mr McVeety inquires as to whether or not the Appellant or her partner are working and is advised that they are not. She states that the only ties that either of them have to Nigeria are those of Mr Isichei's mother who lives there and is over 70 but that neither he nor she have any other friends or contacts in that country and that he has not been to Nigeria since he first arrived in the United Kingdom. She states that he speaks to his mother once or twice a month.
14. She states that she has no family in Nigeria, that she was an only child and that while she has socialised with people with a Nigerian background in this country, they are all people who were born here.
15. Mr Isichei attended to give evidence and relies on his witness statement from 8th August 2014 which he confirmed and adopted as his continuing evidence-in-chief. He too confirmed that neither he nor the Appellant were working. Reference was made both to the Appellant and to Mr Isichei to a bank statement entry. The references are to bill payments marked "reference for Ruben". Mr Isichei advises that these payments are made by a friend called George who lives in Bolton and that they are not business transactions. He states that he pays the money because he is a close friend who is self-employed with a shop and that he had advised him that from time to time he could help to financially to assist Mr Isichei and his family.
16. When questioned as to whether he has any brothers and sisters in Nigeria he states that he does not and that he was an only child and that the only person he contacts in Nigeria is his mother who is in her 70s and is not working. She is apparently supported by the community. He states that she is not in the best of health and that if he were to return to Nigeria she would not be in a position to assist him.
17. Under cross-examination for Mr McVeety, Mr Isichei advises that he is aged 35 and points out that he has three children to support. Mr McVeety in quite vehement cross-examination points out that Mr Isichei's bank account details suggest that he receives more money than he does in a month. Mr Isichei responds that he receives money from the church and from friends. Mr McVeety substantially challenges the sources of Mr Isichei's finances suggesting that he imports goods. This is refuted by

Mr Isichei who states that money was transferred to him but they were charitable gifts from his friends' bank accounts and that he does not have a savings account. An analysis is thereafter given of Mr Isichei's finances and of his outgoings and income and he claims that he is supported by cash donations from his church who he says are sympathetic to his position. He acknowledges that he is an overstayer. When asked as to why he appears to have been given £900 a month, Mr Isichei's comments are that he is some three months behind in his rent and his bills and that he needs to be in a position by which he can seek employment. He states when challenged that he cannot go back to Nigeria due to his ties over here and acknowledges he does not pay any medical bills for his daughter.

18. In re-examination he confirms he has support from his church and that he is behind in the payment of his bills because he does not have enough money.

Submission/Discussion

19. Mr McVeety starts with the previous decision made by Immigration Judge Simpson and in strong submission points out he is constantly amazed by parties who attend before him expecting the UK state system to pick up the tab for their support. He submits it is not the role of the NHS to pick up the child J's medical bills and he submits that the testimony of Mr Isichei lacks any credibility. The idea that he is supported solely by charity and the church is he submits untenable and the fact that he has savings and current bank accounts in the Secretary of State's opinion show that Mr Isichei is working and he asks me to make that such conclusion. He points out this goes to the credibility of his account and that this is a person who has shown he had nothing but contempt for the Immigration Rules and that the previous judge had found that he was working illegally. He therefore asks me to find as a starting point that Mr Isichei's testimony is not credible and reminds me that the natural mother of his son has not turned up to give support.
20. He asks me to find that there are ties to Nigeria and that some of these ties may well be cultural. He comments that there are four people in receipt of public funds here and that this is a claim outside the Immigration Rules. He points out that these public funds are meeting the parties' education, special educational needs and medical needs when there is no entitlement for them. He submits the burden of proof is on the Appellant that her daughter has special needs and that no evidence has been produced. He comments that the family unit would return together and he asks me to give no weight to the fact that there is a British child who would be staying with his mother. He submits that under any proportionality exercise the odds are against the family and that there is no up-to-date medical evidence and no evidence that the child, J, could not be treated in Nigeria. He reminds me that the family do not have any lawful status in the UK and asks me to return them to Nigeria which he submits would be a proportionate decision.
21. Mr Atuegbe takes me to his skeleton and points out that it is ties to Nigeria that is the issue here and that the facts-finding of the First-tier Tribunal Judge stands. He takes me to paragraph 30 of Immigration Judge Simpson's determination, pointing out that the Appellant has private life and that things have moved on from then and that

there is a statement available from Manchester City Council with regard to the needs of the child J and these needs cannot be met in Nigeria. He submits it makes logical sense for J to remain in the United Kingdom. Whilst accepting that she is not a British citizen he submits it would not be right to uproot her. So far as Mr Isichei is concerned he submits that a credible explanation has been given as to where the funds have come from as set out within his bank statement. He asks me to sustain the findings of the First-tier Tribunal Judge.

Findings

22. It is important in this appeal to look carefully at the basis upon which it is taking place. To that end it is necessary to consider my findings in the error of law determination and my directions. It was accepted that the findings of fact of the First-tier Tribunal Judge were to stand save for the evidence relating to the Appellant's ties to Nigeria. Indeed Mr McVeety emphasised that point to me at the start of this hearing. It is against that background I make findings. The main thrust of Mr McVeety's vehement submissions, are a criticism at the very highest level of Mr Isichei. He points out that Mr Isichei's evidence was not found to stand up before Immigration Judge Simpson and that there is nothing that has changed since then that would alter that finding, indeed he considers that Mr Isichei's evidence remains completely untruthful. He points out the amount of income that Mr Isichei is receiving and failure to disclose fully bank statements relating to his evidence. He contends it is completely inconceivable that Mr Isichei who is an overstayer is being funded by his church and by friends to the extent that he says he is and submits that effectively Mr Isichei is working illegally and that the family unit is taking benefit, health and education from the state when they have no entitlement to. He asks me to find that Mr Isichei is not credible.
23. I acknowledge there are failings in the testimony of Mr Isichei. I am not persuaded that his evidence is credible. However that is not the basis upon which this appeal alone stands. It is not Mr Isichei's appeal it is that of the Appellant. I found her evidence to be truthful with regard to her history and indeed that was not a matter that was subject to challenge by the Secretary of State, the findings of fact of Immigration Judge Parker being accepted.
24. The situation therefore is that this is an Appellant whose testimony is credible, who has two children in the UK and the only issue that is outstanding relates to whether or not she has ties to Nigeria. Had Immigration Judge Parker addressed those issues at first instance then this appeal would not be taking place. There is not a shred of evidence given or challenged by the Secretary of State that goes against the finding that the Appellant has no ties with Nigeria. The historical basis of how she arrived in this country and how she has remained here now for some fourteen years is not challenged. As long ago as the decision of Immigration Judge Simpson she was found to have private life in the UK. It is not challenged that she has two children by Mr Isichei nor that they live in a family unit. However much criticism can be made of her partner (and I have no doubt a lot can) this appeal turns on whether or not she has ties with Nigeria. For all the reasons given, namely the manner in which she came to the UK, the fact that she has no family in Nigeria, is an only child and that

she has no contact with anyone in Nigeria, I am satisfied that she has no ties. I acknowledge that she has some cultural ties in that she mixes with Nigerian people in the UK. That in itself, I am quite satisfied is insufficient to show that she would have ties to Nigeria if she returned. If every person who mixed with someone from their original home country were to be found as a result of such contact to have cultural ties to the extent that they need to return to that country then nobody would succeed on this ground.

25. It has to be remembered that this is not an appeal by Mr Isichei. I acknowledged any finding in Ms Iyamu's favour may ultimately benefit him but that is not the issue that is before the Tribunal. The issue is actually quite a narrow one. In such circumstances I find for all the above reasons that the Appellant does not have ties with Nigeria and in such circumstances I find that the decision of the First-tier Tribunal was correct and I remake the decision allowing the appeal pursuant to Article 8 of the European Convention of Human Rights.

Decision

The Appellant's appeal is allowed pursuant to Article 8 of the European Convention of Human Rights.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award.

Signed

Date

Deputy Upper Tribunal Judge D N Harris