IAC-AH-DP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/40899/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 September 2015	**On 7 January 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

OLUFUNMILAYO ADEDAYO OYEYEMI
(NO ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Mr Duffy, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Olufunmilayo Adedayo Oyeyemi, was born on 5 December 1981 is a female citizen of Nigeria. She appealed to the First-tier Tribunal (Judge Charlton-Brown) against the decision of the respondent dated 3 October 2014 to refuse her leave to remain in the United Kingdom and to give directions for her removal under Section 47 of the 2006 Act. Her appeal was dismissed. She now appeals, with permission, to the Upper Tribunal.

2. The appellant entered the United Kingdom in October 2005 as a student. There followed a number of extensions to her leave to remain until 2012 when she re-entered the United Kingdom as a Tier 1 Partner having left the United Kingdom to return to Nigeria. The appellant has a child born in the United Kingdom in 2006. He is a Nigerian citizen. The appellant's husband (Mr Oyeyemi) is not settled in the United Kingdom nor does he have leave to remain as a refugee or as a person with humanitarian protection. Further, since the appellant lives with Mr Oyeyemi, she does not have sole responsibility for her child.

3. In her decision and reasons, Judge Charlton-Brown correctly observed that the appellant was excluded under the Immigration Rules from obtaining leave to remain under both the "parent route" and the "partner route". As regards family life with a child, the Judge also dealt in some detail [12] with the reasons given in the Secretary of State's refusal letter for concluding that it was reasonable for the appellant and her child and husband to relocate to Nigeria. The Judge noted that there was no suggestion that the family had lost contact with other family members in Nigeria or that there were no relevant health issues affecting any of the individuals involved. Although Mr Oyeyemi has no proper "settled" status in the United Kingdom, he has bought a property here and is in employment. The Judge had proper regard to those facts and it is also clear that she has considered all relevant evidence in reaching a conclusion which was patently available to her on the facts, namely that it would be reasonable for the appellant and her family to return to live together in Nigeria. It is possible that the Judge made an error of fact [15] as regards her finding that the appellant had previously had "gainful employment" in Nigeria but it is difficult to see how that error may be material to the outcome of the appeal. Furthermore, as Mr Duffy observed, the Immigration Rules are now formulated to address the best interests of a child as required by Section 55 of the Borders, Citizenship and Immigration Act 2009. The Judge was very clear [16] that the best interests of the child would be "achieved by returning to Nigeria with his mother [the appellant]".

4. Granting permission, Judge Simpson, considered that it was arguable that the Judge had failed to apply paragraph 117B(6) of the 2002 Act (as amended). However, as the Secretary of State's Rule 24 letter of 28 July 2015 points out, Judge Charlton-Brown had fully considered the question as to whether it was reasonable to expect the child to leave the United Kingdom in a consideration of the appeal under the Immigration Rules. Whether considered under the Statute or the Immigration Rules, the Judge's conclusion (that it would be reasonable to expect the child to leave with the appellant) remains valid.

5. Judge Simpson was also concerned that there was no Article 8 ECHR determination. At [19] Judge Charlton-Brown stated that, as regards human rights issues, she had "already dealt with issues of reasonableness and the lack of any exceptional circumstances." She has not proceeded to conduct a separate Article 8 proportionality assessment. There was no

need for her to do so in the circumstances. The very point of the judgment in *Gulshan (Article 8-new rules-correct approach) [2013] UKUT 640 (IAC)* is that, where the Immigration Rules adequately deal with an appellant's circumstances, nothing will be gained at all by making a separate assessment under Article 8. The circumstances of this family fell squarely within the parameters of the Immigration Rules; there were no additional and exceptional circumstances not covered by the Rules which required the Judge to make an Article 8 assessment. The First-tier Tribunal did not err in law by refraining from making such an assessment. In the circumstances, the appeal is dismissed.

Notice of Decision

This appeal is dismissed

No anonymity direction is made.

Signed Date 28 November 2015

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

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

Signed Date 28 November 2015

Upper Tribunal Judge Clive Lane