IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/42078/2014
IA/42111/2014
IA/42096/2014
IA/42102/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 February 2016	**On 16 March 2016**

Before

THE HONOURABLE LORD BURNS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ADEOLA [F]
AYODEJI [O]
[DAO]
[DO]
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:

For the Appellant: Mr T Wilding, Home Office Presenting Officer
For the Respondent: Miss J Victor-Mazeli, Counsel, instructed by Moorehouse Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal in four linked cases against the decision of the First-tier Tribunal which allowed the appellant's appeals against a decision of the Secretary of State refusing the first appellant's (the mother) application for leave to remain in the United Kingdom and a decision made under Section 10 of the Immigration and Asylum Act 1999 to remove her and her family from the United Kingdom. We shall refer to the Secretary of State as the respondent.

2. The first appellant is the mother, born on 10 August 1980. She is a citizen of Nigeria. Her husband, the second appellant, is also a Nigerian national born 1 August 1968. They have two children both born in the United Kingdom, [DAO], born 1 December 2006 and [DO] born 4 July 2010. The elder child therefore has been in the United Kingdom for eight years.

3. There was no dispute that both parents had been living in the United Kingdom without leave for a number of years. The First-tier Tribunal found that neither parent could succeed in their claims under the Immigration Rules. There was no appeal by the appellants in respect of that matter to the Upper Tribunal. The operative decision of the First-tier Tribunal against which the respondent appealed was in respect of the First-tier Tribunal's decision that the elder child [DAO] succeeded in her appeal under Immigration Rule 276ADE(1)(v). That was because, according to the First-tier Tribunal, she had been living in the UK for at least seven years and it would not be reasonable to expect her to leave the United Kingdom. Although it is not spelled out in the determination, the implication is that the appeals of the parents should also succeed on that basis.

4. For this Tribunal Mr Wilding for the Secretary of State submitted that while the First-tier Tribunal Judge had stated at paragraph 77 that the key issue was whether or not it would be reasonable to expect [DAO] to leave the United Kingdom, the judge had in fact applied the wrong test and considered whether there would be significant obstacles to [DAO]'s integration into Nigeria. That was plain from the terms of paragraph 87. There the First-tier Tribunal Judge states that while the parents would not have problems reintegrating into Nigerian society, it was found that there would be significant obstacles for [DAO] as Nigeria is a strange country to her and one which she has not even visited.

5. Mr Wilding submitted that the Tribunal's focus was wholly on [DAO]'s circumstances in the United Kingdom and there was no proper assessment of the reasonableness of her leaving the United Kingdom. In particular, there was no consideration of the crucial factor that she would be leaving the United Kingdom with her family. There were indications that in 2014 certain child protection issues had arisen because of an incident where the

mother had smacked [DAO] and had admitted such an incident for which she had received a caution. Although at paragraph 46 it is recorded that it was [DO] who had been smacked, at paragraph 82 it is said that was [DAO] who was the subject of this conduct. In any event, since there was no evidence from the Lewisham Child Protection Services beyond a copy of the Review Conference and Minute for March and September 2014 the Tribunal Judge concluded that it was "unclear as to whether or not there are still ongoing child protection concerns". Furthermore, while [DAO] had some physical health problems no conclusion could be arrived as to any consequential effect on her removal on that account.

6. Even if the First-tier Tribunal Judge had applied the correct test, there was no adequate reasoning as to why it was unreasonable for this child to accompany her parents to Nigeria.

7. Miss Victor-Mazeli for the appellant submitted that was no material error of law in the First-tier Tribunal's determination. The reference to "integration" in paragraph 87 was simply a typing error. It was clear from paragraphs 76 and 77 that the judge had applied the correct test of reasonableness. At paragraph 84 the basis for her decision could be found and the length of residence in the United Kingdom can be seen to be the most important consideration which the judge took into account. She had put down roots beyond that of the family group in the years she had lived in this country and, having regard to her interests as a primary consideration, it could not be said that the First-tier Tribunal Judge erred in concluding that it would be unreasonable for her to leave the United Kingdom. Accordingly the Tribunal's assessment under Rule ADE(1)(iv) was one which the Tribunal was entitled to reach.

8. In our view, paragraph 87 of the determination plainly indicates that the judge directed her mind to the question of whether there would be significant obstacles for [DAO] in integrating into Nigerian society and, despite the statement at paragraph 77 that the key issue was whether it would be reasonable to expect her to leave the United Kingdom, there is an error in law in respect of the application of the incorrect test. However, even proceeding upon the basis that the judge inadvertently used the wrong language and in fact was applying the correct reasonableness test, it seems to us that she has materially erred in considering solely that issue in the light of the child's residence in this country. That can plainly be seen from the terms of paragraph 84. Issues of child protection and of the child's physical health were neutral factors since no concluded view could be arrived at as to how those issues would affect any relocation in Nigeria or continued life in the UK.

9. The judge appears to us to have left out of account entirely the material consideration that this child would be removed from the United Kingdom to her parents' country of origin within the family unit. Furthermore, there is no consideration within the determination of the conditions which might

be experienced in Nigeria for this family and for [DAO] in particular. In that situation we cannot conclude that a proper and balanced consideration of the reasonableness of her removal from the United Kingdom has been carried out by the First-tier Tribunal Judge. We accordingly consider that the First-tier Tribunal Judge materially erred in law.

Notice of Decision

10. We therefore allow the Secretary of State's appeal and we remit the linked appeals to the First-tier Tribunal at Hatton Cross for a rehearing, before a differently constituted First-tier Tribunal.

Signed Date

Lord Burns
Sitting as a Judge of the Upper Tribunal