



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/42449/2013

THE IMMIGRATION ACTS

**Heard at Birmingham ET
On 22 January 2016**

**Decision and Reasons
Promulgated
On 26 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

KIO

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr A McVeety, Senior Home Office Presenting Officer

For the Respondent: Mrs A Lynch, counsel instructed by Crown Solicitors

DECISION AND REASONS

1. This is an appeal against a decision of FTTJ Pooler, promulgated on 31 March 2015. Permission to appeal was granted by FTTJ Page on 10 June 2015

Background

2. The respondent entered the United Kingdom on 25 January 2013, with

leave to enter as a visitor. On 23 July 2013, he sought leave to remain on the basis of his relationship with his partner and children, who are Zimbabwean nationals with Discretionary Leave to Remain in the United Kingdom. That application was refused on 10 September 2013 because the respondent's partner had only limited leave to remain; the respondent was ineligible because he was in the United Kingdom as a visitor and he also could not benefit from consideration under EX.1 of Appendix FM. With regard to the children, it was said that they were not British, settled and nor had they resided in the United Kingdom for at least 7 years. In addition, the respondent lived with his partner and children as a family unit and he was in the United Kingdom as a visitor and thus ineligible for consideration under EX.1. The Secretary of State did not accept that the appellant had lost ties to Nigeria during the time he had been in the United Kingdom. It was noted that he had resided in Nigeria for 35 years. It was also considered there were no exceptional circumstances involved.

3. In the grounds of appeal, it was argued that the respondent's wife had been living in the United Kingdom for 11 years; that his eldest son had resided here for 7 years and the respondent left Nigeria to live in Benin in 1989; first arrived in the United Kingdom in 2005 and his relatives in Nigeria had either passed away, moved away or he was no longer communicating with them.
4. The respondent's appeal was previously allowed by First-tier Tribunal V A Lowe, on human rights grounds, in a determination promulgated on 10 June 2014. That decision was set aside, in part, by Deputy Upper Tribunal Judge Pickup, following a hearing on 21 October 2014 and the appeal remitted to the First-Tier Tribunal. The evidential summary referred to between [7] and [18] of the determination was preserved, with leave given to the parties *"to adduce further evidence to bring private and family life circumstances up to date for the rehearing of the appeal."*

The hearing before FTTJ Pooler

5. The respondent and his partner gave evidence before the FTTJ. The FTTJ found that the respondent could not meet any of the Immigration rules relating to private and family life. In terms of Article 8 outside the Rules, the FTTJ considered that any interference with the appellant's family life was disproportionate, particularly taking into consideration the best interests of the children who were then aged 8 and 4.

Error of law

6. The grounds of appeal argue that the FTTJ's finding that it was not reasonable to expect the respondent's children to leave the United Kingdom was inadequately reasoned, irrational and ignored the clear guidance in Azimi-Moayed and others (decision affecting children; onward appeals) [2013] UKUT 00197 (IAC).
7. FTTJ Page granted permission, finding there to be an arguable error of law

on the basis argued in the grounds.

8. The respondent did not file a Rule 24 response. However an additional bundle of evidence was served in advance of the hearing, which included documents showing that the appellant's wife and children had been granted further discretionary leave to remain in the United Kingdom until 2018.

The hearing

9. Mr McVeety had not been supplied with a file. Counsel for the respondent was also lacking documents. Copies were therefore provided of the FTTJ's decision, grounds of appeal and grant of permission from the IAC case file.
10. Mr McVeety had little to argue in respect of the grounds, stating that he disagreed with the grant of permission, in that the FTTJ had applied the case law in question, albeit incorrectly.
11. Mrs Lynch argued, in essence, that the FTTJ's findings were well-reasoned. There had been a substantial quantity of information put before the FTTJ, none of which was in dispute. The FTTJ heard oral evidence from the respondent and his wife; assessed their credibility and considered reasoned arguments. He was entitled to reach the conclusions he did. She stressed that the guidance in Azimi-Moayed was not a straightjacket and the FTTJ was entitled to use his discretion.
12. Mr McVeety had nothing to add in reply.

Decision on error of law

13. I found there to be no material error of law in the FTTJ's decision and reasons and accordingly upheld his decision in its entirety for the following reasons.
14. The FTTJ followed a structured approach to deciding this appeal. This can be seen from [16] onwards where he considers that the respondent was unable to meet the requirements of the Rules and correctly and carefully follow the steps set out in Razgar. The FTTJ attached weight to the public interest at [23] of the decision with a specific reference to section 117B(1) of the Nationality, Immigration and Asylum Act 2002, as amended.
15. The grounds assert that the FTTJ's finding that it was not reasonable to expect the respondent's minor children to leave the United Kingdom was inadequately reasoned; I consider this argument to be misconceived. The decision was resplendent with reasoning. The FTTJ explored the best interests of the children; at [20] he took into consideration the fact that the eldest child had then been in the United Kingdom for 8 years and 7 months; at [21] he found, on the unchallenged evidence before him, that the eldest child had started to establish relationships and put down roots in the United Kingdom. Also at [21] the FTTJ took into consideration the Secretary of State's case, specifically noting that the children were not

British and had no medical or educational needs. Between [27] and [30] of the decision, the FTTJ set out the particular issues with the eldest child relocating to either Nigeria or Zimbabwe.

16. The grant of permission refers to the general guidance given in Azimi-Moayed. I find that the FTTJ did not materially err in his approach to this case. The headnote of the said determination, indicates that the principles outlined therein were given to assist judges with their decisions. As Mrs Lynch rightly argues, judges are entitled to use their discretion. I consider the FTTJ took into consideration headnote iv) at [21], in that notwithstanding that seven years from the age of four is likely to be more significant, on the particular evidence before him the eldest child in this case had established relationships of his own and put down roots. The FTTJ did not err in finding that eight and a half years residence was a relevant consideration. Furthermore at [24] the FTTJ concluded that it was the nature and quality of family life in this case, which gave it strength.

Conclusion

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I uphold the decision of the FTTJ.

An anonymity direction was made by the FTTJ and I maintain that direction in the following terms;-

“Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. “

Signed

Date: 24 January 2016

Deputy Upper Tribunal Judge Kamara