IAC-AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/12950/2015

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 20 February 2017	**On 29 March 2017**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

N A A
(ANONYMITY DIRECTION MAINTAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Brookes of Counsel, instructed by Irving & Co Solicitors
For the Respondent: Mr Mills, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Nigeria, has permission to challenge the decision of First-tier Tribunal Judge Juss sent on 19 July 2016 dismissing her appeal against a decision made by the respondent refusing to grant her asylum on 14 October 2015. The appellant came to the UK in 2006 and is a long-term overstayer. The appellant has four dependants aged 12, 9, 7 and 5.

2. The principal ground on which the appellant relies is that the judge failed to have regard to relevant matters in relation to the best interests of the

children. It is argued the judge failed to consider any of the evidence provided in the appellant's bundle as to the children, such as the school reports, letters, support centre letters, educational certificates and witness letters. It is claimed that the judge wrongly derived from the Supreme Court decision in **Zoumbas [2013] UKSC** that the children's best interests would lie in their being kept together with the parents. It was highlighted that two of the children had lived in the UK for over seven years.

3. The second ground of challenge alleges a failure on the part of the judge to make findings on the reasonableness of return for the dependent children, pursuant to s.117B(5) of the NIAA 2002, even though this was potentially determinative of the appeal. There was also said to be a corresponding failure to consider the unreasonableness of the children's return in the context of paragraph 276ADE(1)(iv).

4. In considering the appellant's grounds it is important to bear in mind that the judge made strong adverse credibility findings both in relation to the claims she had made about her family circumstances in Nigeria and in the UK. The judge did not believe that she had been mistreated by her husband's family or that she was estranged from her four brothers. Nor, crucially, did the judge accept that she was separated from her husband and he noted that in December 2010 the husband had had his Article 8 claim rejected because it was not accepted he was the sole carer of the children. None of these credibility findings is challenged in the grounds. At paragraphs 30 and 31 the judge concluded:

> "30. Plainly, both the Appellant and her husband are attempting to remain in this country in whatever way they can. Both the Appellant and her husband have spent the majority of their lives and formative years in Nigeria. Although three of their four children were born in the UK; neither of their parents have leave to remain here. If the Appellant is removed, and if her husband is removed, the children, having no independent lives of their own, would go with the parents to Nigeria, a country in which they would have sufficient ties, so that family life could be kept intact and still maintained. They could easily be reintegrated into Nigerian society given the family connections they have there. They could not succeed under paragraph 276ADE.
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> 31. I find that they cannot succeed under Article 8 freestanding jurisprudence either. In considering Article 8 freestanding jurisprudence, regard must be had to the interests of the children under Section 55 of the BCIA, but this aspect has been very properly fleshed out in the refusal letter from paragraphs 46 to 50 and in the case of **Zoumbas [2013] UKSC 74** it was held that the children's 'best interests' would lie in their being kept together with the parents and the same would apply here. I find that there are no exceptional circumstances. The medical condition of the Appellant does not warrant such a categorisation."

5. As regards the principal ground, which relates to the judge's treatment of the best interests of the child, that treatment is open to the criticism that it is relatively brief and unstructured. However, I am not entitled to set aside his decision unless satisfied he fell into material error. I do not consider that he did. At paragraph 20 the judge noted that he had considered all of the documentary evidence and at paragraph 18 he noted Mr Bradshaw's submissions on the appellant's behalf regarding her Article 8 circumstances. Whilst he does not expressly refer to any of the school letters and educational certificates and other materials relating to the children's situation in the UK, there is no proper basis for considering that he did not have regard to these documents.

6. I do not consider the judge's decision demonstrates any failure to apply relevant legal principles governing assessment of the best interests of the child. The judge made reference to s.55 of the BCIA and also to the Supreme Court case of **Zoumbas**. Whilst the Supreme Court case of **Zoumbas** [2013] UKSC 74 does not specifically state that the best interests of children lie in being with their parents but considered defeasibly that proposition is integral to its analysis and it would be bizarre of any court or Tribunal to suggest that that was not the general position. As Elias LJ stated in **MA (Pakistan) [2016] EWCA Civ** at 40: "It will generally be in the best interests to live with his other parents or siblings as part of a family that is usually a given for younger children absent domestic abuse or some other reasons for believing the parents are unsuitable". What the judge was doing in referring to **Zoumbas** was highlighting the fact that in the case of the appellant's children they had two parents who were in a position to return to Nigeria together and there was thus no issue of separation or other any other basis to disapply the general rule. It is true that the judge does not expressly state that he took into account that in the case of children who had lived in the UK for seven or more years strong reasons had to be shown for removing them. But what Elias LJ concluded in **MA (Pakistan)** was that what this requires is no more than that the seven year rule must be given significant weight (paragraph 46). Further, turning to consider what the judge did, I do not think it can be said he failed to attach this factor significant weight. At paragraph 18 he recorded submissions from Mr Bradshaw to that effect and noted in paragraph 30 that three of the four children were born in the UK. The judge also found in the same paragraph that the children have no independent life of their own; that finding was consistent with the documentary evidence before the judge. Also of some importance in this case is that at paragraph 31 the judge expressly voiced agreement with the reasons given by the respondent in the refusal letter at its paragraphs 46 – 50. In the letter the respondent noted that none of the children had formed any deep, strong friendships outside of the family unit and made reference also to a 2012 Children's Service Assessment. Mr Brookes takes the point that the 2012 assessment was out of date, but the appellant's solicitors did not adduce a more up-to-date assessment and the documentary evidence produced before the FTT did not refute the respondent's assessment in this regard. I do not accept that this assessment was contradicted by the initial assessment document under

the heading 'Family and Social Relationships' This document mentions friendships but does not specify "deep, strong" friendships. It was self-evident that in terms of cultural and linguistic ties the children were familiar with the culture and language of their parents. In short, the judge's assessment of the children's best interests was entirely within the range of reasonable responses.

7. As regards the second point, I do not accept that the judge failed to assess the test of the reasonableness of the children being expected to return to Nigeria with their parents. He recorded the parties' submissions regarding the issue at paragraph 17. Whilst in paragraphs 30 – 31 he does not expressly refer to reasonableness, it is clear enough that he was considering all the relevant requirements of paragraph 276ADE including reasonableness. Mr Brookes submits that in paragraph 30 the judge confined his assessment to the issue of integration, but the factors he mentions relate both to the extent of the children's connections in the UK (in particular the fact that three were born in the UK) and their potential connections in Nigeria. Going back to **MA (Pakistan)**, this case also helps clarify that in considering the appellant's position under paragraph 276ADE the judge was clearly entitled to treat the parent's poor immigration history as a relevant factor: see paragraph 30.

8. The need for such an approach has been confirmed by the UT President in **Treebhowan and Others (NIAA 2002 Part 5A – compelling circumstances test) [2017] UKUT 00013 (IAC)**. In light of the Court of Appeal decision in **MA (Pakistan)** the judge was not obliged to give specific consideration to **PD and Others (Article 8 - conjoined family claims) Sri Lanka [2016] UKUT 108**. Indeed, in light of the Supreme Court guidance in **Hesham Ali [2016] UKSC 60**, it was sufficient that his decision demonstrates a proportionality assessment weighing factors on both sides of the state. It does.

9. It was entirely open to the judge to also consider that the children would have sufficient ties in Nigeria and would be able to integrate there given their family connection there. The grounds make a fair criticism of the judge for not separately considering s.117B(5), but as Mr Brookes conceded its provision comport with those set out in paragraph 276ADE(1)(iv). Hence any error on the part of the judge in failing to address paragraph 117B(5) expressly was not material. Nor do I find that there was any material error on the part of the judge in stating at paragraph 31 that he found "that there were no exceptional circumstances". There is no reason to think that by such a term he meant anything different from compelling circumstances.

10. For the above reasons, whilst the judge's decision has flaws, they do not disclose any material legal error. The judge's decision shall stand.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify

him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date: 26 March 2017