Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/17879/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24 April 2017	**On 8 May 2017**

Before

Deputy Upper Tribunal Judge Pickup
Between

FOLUKE OYEKEMI FADEYI
[No anonymity direction made]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms U Dirie, instructed by MQ Hassan Solicitors
For the respondent: Mr P Armstrong, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Turquet promulgated 22.8.16, dismissing on all grounds her appeal against the decision of the Secretary of State, dated 28.4.15, to refuse her application made on 17.3.15 for LTR on article 8 grounds outside the Rules.

2. At the appellant's request, the judge dealt with the appeal on the papers, without an oral hearing.

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3. First-tier Tribunal Judge Baker refused permission to appeal on 25.1.17. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge McWilliams granted permission to appeal on 8.3.17.

4. Thus the matter came before me on 24.4.17 as an appeal in the Upper Tribunal.

Error of Law

5. At the hearing I found no error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Turquet should be set aside. I reserved my reasons, which I now summarise.

6. As Judge McWilliam noted in the grant of permission, the First-tier Tribunal was not assisted by the appellant and the way in which the appeal was presented was deficient. As this was a paper case, as the appellant's request, the judge had only the evidence and information then in the court file on which to decide the appeal.

7. The grounds of application for permission to appeal to the Upper Tribunal comprise a letter from the appellant, asking for "reconsideration." The appellant states that on 17.5.16 she married Mr Vincent Akin Williams, a British citizen, since which time they have been living together with her own daughter, Favour. She had been living in the UK for over 10 years prior to marriage. "I am depending on the route of private and family life in the UK and also I am my husband personal carer as he suffered mobility problem. His disability requires constant care. I am appealing that my case be consider outside the rules to enable me fully support him. Attached here are documents that support my application."

8. At [28] of the decision of the First-tier Tribunal, the judge noted that when the application was considered by the Secretary of State, the appellant was not married and there was no mention of her being in a relationship, so that she could not satisfy the requirements of Appendix FM as a partner. Although the appellant had a child with her in the UK, she is not a British citizen and had not lived in the UK for at least 7 years preceding the application, so that the appellant could not meet the requirements of Appendix FM as a parent.

9. At [36] the judge noted that the appellant arrived in the UK as a visitor and has had no LTR beyond 2006. She waited until 2011 before attempting to regularise her status. She would be returning to Nigeria, the country of her birth and heritage, where she spend her formative years. The judge considered that Mr Williams is a Nigerian citizen and that the appellant's mother is in Nigeria. It would be open to Mr Williams to sponsor the appellant's application from Nigeria to return to the UK as a spouse. The appellant's daughter had only been in the UK for two years and would be able to return to Nigeria and continue her education there, as she had done in the past.

10. In granting permission, Judge McWilliam found it arguable that the judge "did not have sight of the evidence received by the Tribunal on 9 August 2016 in relation to the appellant's daughter and adoption by Mr Williams. It is arguable that there is no assessment of the child's best interests in this context or at all."

11. Judge McWilliam added that "It is expected that the solicitors prepare full, detailed and focused grounds of appeal in advance of the substantive hearing." Unfortunately, that did not happen, though I do have Ms Dirie's skeleton argument.

12. Ground 2 in the skeleton argument states: "The judge did not have sight of the evidence received by the Tribunal on 9 August 2016 in relation to the appellant's daughter and adoption by Mr Williams (the appellant's husband and a British citizen)." It is submitted that there was a "wholesale failure" to consider this evidence, amounting to a material error of law.

13. However, it is not clear and neither of the representatives could tell me to what evidence Judge McWilliam was referring as having been received by the Tribunal on 9.8.16. More significantly, contrary to her skeleton argument, Ms Dirie conceded that the appellant's daughter had not been adopted by Mr Williams. Thus far, only enquiries had been made about such an adoption. To that extent the grounds of appeal and skeleton argument are somewhat misleading.

14. It remains the case that the daughter, born 12.7.03, is a Nigerian citizen and Mr Williams is not her father. The appellant claims that the father of the child died in a road accident and when the child was 22 months only, the appellant decided to come to the UK and left the child with her mother in Nigeria. The child came with her grandmother on visa visits to the UK in 2011 and again in 2014, but did not leave on that latter occasion. The appellant claims that her mother had no strength to look after the child anymore, so the appellant decided to keep her with her in the UK.

15. The First-tier Tribunal Judge noted at [15] that there was evidence that Mr Williams was seeking to adopt the appellant's daughter. The judge noted that in the refusal decision the Secretary of State accepted that the appellant had sole responsibility for her child, who only entered the UK on 18.3.14, and thus had only been in the UK for 1 year at the date of the application. At [21] the judge referred to the duty to safeguard and promote the best interests of the welfare of children in the UK, in accordance with section 55 of the Borders, Citizenship and Immigration Act 2009. Further considerations in relation to the child were made, briefly, at [36] of the decision. The judge concluded that the daughter could return with the appellant and continue her studies and life with her mother in Nigeria.

16. I note that the First-tier Tribunal Judge did not have the advantage of any significant evidence about the child's integration in the UK. The typed grounds and additional statement of additional grounds to the First-tier

Tribunal make absolutely no reference to the daughter. There was no evidence before the First-tier Tribunal of any adoption, and that remains the case. The school records now presented by the appellant were not put before the First-tier Tribunal.

17. In the circumstances, the First-tier Tribunal Judge did all that could reasonably have been expected to address the best interests of the child. Even if further time or attention had been dedicated to those best interests, I can see no basis upon which, on the very scant evidence presented and absence of reference to the child in the grounds of appeal, the judge could have reached any other conclusion that the best interests of this child were to return to Nigeria with her mother, to the country of her birth and background, to continue her former life there and pursue her education there. The child has no entitlement to remain in the UK, her immigration status was initially precarious and then unlawful, so that pursuant to s117B little weight should be accorded to such. Her family life is with her mother. If Mr Williams wishes to join the appellant and the child in Nigeria, it is open to him to do so. The appellant has not shown she can meet the requirements of the Rules and even if she reached EX1 could not show that there are insurmountable obstacles to continuing such family life as she has with Mr Williams in Nigeria. Frankly, the outcome of the appeal was inevitable on the limited evidence of the appellant's circumstances.

18. The adoption issue that appears to have persuaded Judge McWilliams to grant permission to appeal has proven to be entirely a 'red-herring.' If and when there is any such adoption, the appellant may make a fresh application on that basis, but as things stand there is no reason why mother and child should not return to the UK. Judge Turquet gave proper consideration to the appellant's circumstances, including the claim that she had to remain to look after Mr Williams who had broken his ankle, and such sparse information as was placed before the Tribunal in relation to the appellant's child, and gave cogent reasons for the findings made and conclusions reached. I thus find that there was no material error in the making of the decision of the First-tier Tribunal.

Conclusions:

19. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I make no fee award.

Reasons: The appeal has been dismissed.

Signed

Deputy Upper Tribunal Judge Pickup

Dated