



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/05560/2016
HU/05564/2016 & HU/05572/2016

THE IMMIGRATION ACTS

Heard at Field House
On 18 May 2018

Decision & Reasons Promulgated
On 23 May 2018

Before

Deputy Upper Tribunal Judge Pickup

Between

**OBA
EAO
POO**

[Anonymity direction made]

Appellants

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellants: Mr T Ojo, instructed by Graceland Solicitors
For the respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellants' appeal against the decision of First-tier Tribunal Judge White promulgated 13.7.17, dismissing their linked appeals against the decisions of the Secretary of State, dated 6.2.16, to refuse their application made on 8.10.15 for LTR on human rights grounds.
2. First-tier Tribunal Judge Hollingworth granted permission to appeal on 8.3.18.

3. Thus the matter came before me on 18.5.18 as an appeal in the Upper Tribunal.
4. As a preliminary matter, I note that permission appears to have been granted in respect of the first two appellants only. However, it is clear that the grounds relate to all three appellants and I found notices of application of all three within the case file. It is not clear why only two appellants have been listed before the tribunal. For all practical purposes, the cases stand or fall together. I have proceeded on the basis that all three appeals are before the Upper Tribunal, even though strictly speaking that may not be accurate.

Error of Law

5. For the reasons summarised below, I found no material error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside.
6. In granting permission, Judge Hollingworth found that the First-tier Tribunal Judge arguably erred in failing to set out a greater analysis of the degree of integration of the second appellant “across the social, cultural and educational spectrum of the United Kingdom in assessing the question of reasonableness,” especially given that the child had crossed the 7-year threshold. It was also considered arguable that the judge had attached too much weight to the children remaining with the first appellant.
7. The latter part of the grant of permission makes no sense to me and no satisfactory explanation could be offered by either of the two representatives before me. The judge referred to ‘deracination,’ in a convoluted sentence structure. It may be that the judge intended to refer to ‘integration,’ but the sense of the sentence remains unclear.
8. However, it is clear from the decision that Judge White found at [17] that the best interests of the second appellant were to remain in the UK, giving cogent reasons for that conclusion. The judge then went on to consider that child’s claim under paragraph 276ADE(I)(iv) and the implications for the rest of the family outside the Rules under Article 8 ECHR.
9. There is no merit in the first ground advanced before me, to the effect that the judge failed to take into account the length of the stay of the second appellant, now 9 years in the UK. It is clear that the judge gave very careful attention to all the relevant circumstances, including the child’s length of residence and integration in the UK.
10. After assessing best interests, the primary remaining issue in the appeal was that of the reasonableness of expecting the second appellant to leave the UK when the child had crossed the 7-year threshold and the effect on the rest of the family. It is the same reasonableness test within the Rules under 276ADE as it is outside the Rules under section 117B of the Nationality, Immigration and Asylum Act 2002, and has been recently considered by the Court of Appeal in MA (Pakistan) and Others v Upper Tribunal (IAC) and Anor [2016] EWCA Civ 705 where the Court held that reasonableness in this context requires an assessment of the wider public interest factors in favour of removal. This assessment the judge embarked on from [18] onwards. The determination of weight to be accorded to these competing factors was a matter within the province of the judge. Having carefully considered the decision

as a whole, I do not find it perverse or irrational for the judge to conclude that despite the length of residence and integration in the UK, taking into account the competing public interest considerations and in particular that there was no basis for any other member of the family to remain in the UK, it was reasonable to expect the child to accompany the rest of the family to Nigeria. They have no legitimate expectation to be able to remain in the UK and were without leave so that their immigration status has been precarious.

11. Mr Ojo relied on the fact that the second appellant is close to being able to apply for naturalisation as a British citizen. The tribunal recognised this at [19] of the decision, but had to take account of the circumstances as they were at the time. It may still be open to the second appellant to make such an application later this year, but that was not a matter strictly relevant to the decision before the First-tier Tribunal.
12. I note that as drafted the grounds relied on out of date case law and incorrectly plea that s117B(6) is determinative of the right of the child to remain in the UK. Contrary to the premise of the grounds, the second appellant and/or the other child are not going to be separated from their parent and family life will continue outside the UK on return to Nigeria. The starting point where the parent is to be removed is that the child's best interests are to go with the parent. There was obviously a balancing exercise to be carried out but it is clear that was done within the First-tier Tribunal decision.
13. I am satisfied that the findings and conclusions were fully open to the judge on the evidence and for which cogent reasoning has been provided in a careful assessment. The grounds are little more than a disagreement with the decision and fail to identify any material error of law. A different judge may have reached a different conclusion, but it was open to this judge to reach the conclusion made, for which cogent reasoning has been provided.

Decision:

14. 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 appeals remain 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 make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I continue the anonymity direction.

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 have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeals have been dismissed.



Signed

Deputy Upper Tribunal Judge Pickup

Dated