



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

Appeal Number: PA/10771/2018

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 13 March 2019

**Promulgated
On 04 April 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

O T

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Ms E Rutherford instructed by Rodman Pearce Solicitors

DECISION AND REASONS

1. This is the rehearing of the human rights element of the appellant's appeal against the Secretary of State's decision of 26 August 2018 refusing asylum and human rights claims.
2. I need say no more about the asylum claim as the judge dismissed that and there was no challenge to that conclusion. The appeal was allowed in respect of Article 8 of the European Convention on Human Rights, but following an error of law decision before Upper Tribunal Judge Canavan, errors of law were found in that decision and the judge directed that the human rights claim was to be remade in the Upper Tribunal.

3. The appellant adopted the supplementary witness statement dated 4 March 2019 that was in the supplementary bundle. She was asked a few questions by Ms Rutherford. She said that if she returned to Nigeria with her husband and children she would have nowhere to live as she had no ties there. She had nothing there and it would be very hard and there was no-one there to help her or her husband on return. She had no contact with friends or family members there. Her husband had no family in Nigeria. It will be really hard for the children and she did not know how to explain it to them. They were in school in the United Kingdom and her younger child who had come to the United Kingdom at the age of 2 months believed that he had been born in London. It was difficult enough for them even to move house in the United Kingdom quite apart from going to live in Nigeria.
4. On cross-examination the appellant said that she was 30 when she came to the United Kingdom. She was not working in Nigeria before she came to the United Kingdom as she had her first child in 2006 so she did not do anything after school. She agreed that she and her husband were educated in that they had been to school. She was asked why she and her husband could not work in Nigeria and she said she had been attacked in Nigeria and this had been the basis of her asylum claim and it was a really difficult deadly situation. She had come to the United Kingdom after giving birth to her second child. She could not go back to Nigeria. She was facing a hard lifestyle there. Her husband could not protect her or the children. She had already lost one child and could not risk anybody's life.
5. It was put to her at the asylum claim had not been believed in that it had not been appealed and she said the solicitors had told her to wait for the result from the Home Office and she had not been advised to appeal. Her mother was dead and she did not know where her father was. She had no siblings and did not have anybody. Her husband had worked for a few years in Nigeria as a research officer. She was asked why he could not provide for her and the family on return and she said they could not go together and he did not want to risk his life and they were all at risk. When asked from whom they were at risk she said she was attacked and it really affected him too and he had been attacked because of them and had a scar on his leg. As to whether they could go and live elsewhere in Nigeria she said they had moved to three States and it had not stopped.
6. Ms Rutherford had no further points to raise by way of re-examination.
7. In his submissions Mr Melvin referred to his written submissions. He had no real issue with the evidence given. The children were at school in the United Kingdom and the elder child had friends at church and would like to live in the United Kingdom. He relied on the written submissions. The question was whether it would be reasonable in the real world to expect the whole family to return as a group to Nigeria. There had been a lot of overstaying by the parents. The asylum claim had been disbelieved. The best interests of the children were not to remain in the United Kingdom, and even if it were, it would be reasonable for the family to return to Nigeria.

8. Mr Melvin referred to the decision of the Supreme Court in KO (Nigeria) [2018] UKSC 53. None of the family members had leave to remain. There had been applications over the years. Mr Melvin did not accept the appellant's evidence today that she had no family in Nigeria or that there was a problem there. Her asylum claim was without merit or credibility so there was no risk on return. Both parents were well-educated. There was a full education system available and English was spoken in the schools. The parents could maintain their family by working in Nigeria. It was not in the children's best interests to remain in the United Kingdom and even if it were it was reasonable to expect them all to return to Nigeria. The children were settled in school and it was not argued that it was a crucial stage of their education.
9. In her submissions Ms Rutherford relied on and developed the points made in her skeleton argument. The question was whether it would be reasonable in all the circumstances for the children to return to Nigeria. The two eldest were qualifying children. It was in their best interests to remain in the United Kingdom. Letters written by them had been put in. Neither had any recollection of Nigeria and they saw themselves of being like their peers in the United Kingdom. They were at important stages of their education. They would have been here for nine years in June and that was a long time for children of their age. They had their life here and ties to the community in the United Kingdom including the church and the Boys Brigade. It was not in their interest to remove them from the culture in which they had grown up.
10. In the real world it was the case that neither parent had leave to remain but this was not the responsibility of the children. They were not to be punished for their parents' sins as held in Zoumbas [2013] UKSC 74.
11. With regard to the Secretary of State's policy which had been put in, it was accepted that if a child had been in the United Kingdom for at least seven years then they would not normally be expected to leave the United Kingdom. The decision in ZH (Tanzania) [2011] UKSC 4 did not preclude the possibility of success. There is a factor weighing. Seven years after the age of 7 was different from the seven years from birth. The circumstances of the case were significant. There would be difficulties on return and integration and it would be unreasonable to expect them to leave the United Kingdom.
12. I reserved my determination.
13. The essential issue in this is Article 8 of the Human Rights Convention and whether, the specific issue, it will be reasonable to expect the children to leave the United Kingdom. The eldest child O is now aged 12 years and 6 months, and was aged 3 years and 10 months when he came to the United Kingdom. The other qualifying child is E who is aged 8 and came to the United Kingdom at the age of 2 months. There are two other children, OR and OP, the former aged 6 and the latter being nearly 2. They have both spent their entire lives in the United Kingdom.

14. It is clear from what was said by the Supreme Court in KO (Nigeria) that “reasonableness” is to be considered in the real world in which the children find themselves. A real world question here in response to the question “why would the child be expected to leave the United Kingdom?” is “because the parents have no right to remain in the United Kingdom”. This is the background against which the assessment of reasonableness has to be conducted. So as noted by Lewison LJ in EV (Philippines) [2014] EWCA Civ 874 at paragraph 58, the ultimate question is: “is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?”
15. Ms Rutherford referred me to the section of the Secretary of State’ policy which tells decision makers how to consider whether it is reasonable to expect a child to leave the United Kingdom. It is clearly important to consider the child’s best interests as a primary consideration. It is necessary to consider whether there is a genuine and subsisting parental relationship, which is clearly the case here. The next issue considered is whether the child is a British citizen or has lived in the United Kingdom for a continuous period of at least seven years. The latter criterion applies to the two oldest children. It is said that in a case of such a qualifying child the starting point is that the Home Office would not normally expect a qualifying child to leave the United Kingdom and that it is normally in a child’s best interests for the whole family to remain together which means that if the child is not expected to leave then the parent or parents or primary carer of the child will also not be expected to leave the United Kingdom.
16. The guidance goes on to say that there may be some specific circumstances where it would be reasonable either to expect the qualifying child to leave the United Kingdom with the parents or for the parents to leave the United Kingdom and for the child to stay. The latter does not apply in this case. As regards points that may make it reasonable for a qualifying child to leave the United Kingdom with the parent, relevant factors are noted as being that the parent or parents or child is/are a citizen of the country and therefore able to enjoy the full rights of being a citizen in that country, there is nothing in any country specific information which suggests that relocation would be unreasonable, the parent or parents or child have existing family, social, or cultural ties with the country and if there are wider family or relationships with friends or relationships with friends or community overseas that can provide support. Also removal would not give rise to a significant risk to the child’s health and there are no other specific factors raised by or on behalf of the child.
17. The eldest child in his witness statement says he has a lot of friends both in churches, social groups and has known no other home than the United Kingdom. The second child E has his dreams to live in the United Kingdom and he refers to his best friends with whom he goes to school and attends church. There are also documents from the schools as to their presence in the schools and a letter from the Boys’ Brigade branch which the boys

attended until 2018. There are various certificates and attestations with regard to the children.

18. With regard to the best interests of the children I am satisfied that those best interests are for them to remain in the United Kingdom with their parents. They have been settled here for in the case of the qualifying children most of their lives and all their lives in the cases of the other children. They are clearly settled into the community here and in schools and in particular with regard to the oldest child who is now 12, he has spent significant years of his life in the United Kingdom and can understandably be regarded as seeing this as his home.
19. Though I do not find credible the evidence of the appellant that there are no family or friends in Nigeria, I attach weight to the amount of time the children have been in the United Kingdom, the ages they are at and the fact that the two eldest children are both qualifying children. Clearly they can properly be regarded as having put down roots be integrated into life in the United Kingdom. It is in their best interests for the children to stay together with the rest of the family, and I do not consider that the factors that might make it reasonable for a qualifying child to leave the United Kingdom with their parents is set out in the respondent's guidance relevant though they clearly are with regard to such matters as the citizenship of the family, the absence of country's specific information suggesting relocation would be unreasonable, the absence of evidence to show significant risk to the children's health or any other specific factors, that particular factor weight in this case is the amount of time they have spent in the United Kingdom and in particular with regard to the eldest child the age that he is now at and his degree of integration that must I think follow from that. Accordingly I find that it would not be reasonable to expect the eldest child nor the second child to leave the United Kingdom, and as a consequence this appeal succeeds on human rights grounds under Article 8 of the European Convention on Human Rights.

Notice of Decision

The appeal is allowed on human rights grounds.

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 his 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 02 April 2019

Upper Tribunal Judge Allen