Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10811/2018

THE IMMIGRATION ACTS

Heard at Glasgow
On 26th April 2019

Decision and Reasons Promulgated
On 28th May 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

M M O M
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr Olabamiji of DMO Olabamiji, Solicitors
For the respondent: Mr M Mathews, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a national of Nigeria. She came to the United Kingdom in March 2013, travelling on a spousal dependant Visa. She was accompanied by her daughter, [D], born in July 2010. Another daughter, [E], was born in the United Kingdom in January 2014.

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2. She made a claim for protection in March 2018. She said she was fearful of her husband's family. She said he had converted from Islam to Christianity after leaving school and a consequence they held greivance. His family also practiced FGM and the appellant claimed she feared that they will force this upon her daughter. She also refers to the general threat in the country from Boko Haram.

3. The claim was refused on 24 August 2018.The respondent found the claim in relation to her husband's family did not constitute persecutory treatment. Regarding FGM, the appellant said she and her husband were from the Yoruba tribe and it was accepted the country information indicated FGM was prevalent amongst them, with statistics showing over 50% of women aged between 15 and 49 had undergone the procedure.However,the appellant had not undergone this and she and her husband were opposed to it.There had been no difficulties in this regard whilst she was living in Nigeria. If there were any truth in the fear of FGM then the respondent concluded that there was sufficiency of protection and localised difficulties could be avoided by relocation. No other circumstances were identified that would justify the grant of leave.

4. Regarding Boko Haram, the respondent acknowledged the threat they presented but the appellant's fear was non-specific.

5. Reliance was placed upon section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 and the delay in claiming was highlighted.

6. The appeal was heard by First-tier Tribunal Judge PA Grant Hutchison on 2 November 2018 at Glasgow. At the hearing the judge also considered medical issues in relation to the appellant and her daughter. In a decision promulgated on 19 December 2018 the appeal was dismissed.

The Upper Tribunal

7. Permission to appeal was granted on the basis it was arguable the judge erred in the article 8 assessment, including the consideration of the best interests of the children. A specific ground for which permission was sought related to the second child's illness. The judge accepted the child had sickle-cell disease but concluded it had not been shown treatment was unavailable in Nigeria. Permission was not granted on this issue given the high threshold for a medical claim to succeed.

8. At hearing, the appellant's representative submitted that the article 8 assessment, particularly in relation to the children had not been properly carried out. He submitted there were compelling circumstances. He said this was because the 1st appellant had been diagnosed with chorio carcinoma and

was being monitored and her younger daughter was receiving ongoing treatment in respect of sickle cell disease.

9. In response, Mr Mathews argued that the judge had taken into account these factors. The judge had referred to the treatment that would be available in Nigeria. They were not qualifying children. The judge at paragraph 22 referred to having considered the totality of the evidence. The judge accepted that the appellant and her husband had developed a private life in the United Kingdom, particularly given that her husband was a minister of religion. However, the requirements of the immigration rules were not met and the judge saw this as a powerful indication when considering matters outside the rules. He said they had no legitimate expectation to be allowed to remain.

10. Mr Matthews referred me to paragraph 18 and 19 of KO (Nigeria) and Others (Appellants) v Secretary of State for the Home Department (Respondent) [2018] UKSC 53., This concerned qualifying children whereas the children here were not in that category. Para 18 refers to the respondent's the IDI guidance and the need to consider where the parents are expected to be, since it will normally be reasonable for the child to be with them. Para 18 refer to EV (Philippines) v Secretary of State for the Home Department [2014] EWCA Civ 874 at para 58:

> "58. In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?"

11. In response, Mr Olabamiji said matters had to be assessed in the round. They came to the United Kingdom lawfully. The children are now enrolled in school.

Consideration

12. Permission to appeal has been granted on the basis the judge failed to properly assess article 8, particularly the best interests of the children. Permission was not granted on the 1st ground, which related to health.

13. There are undisputed background facts. The appellant has 2 children, [D], born in July 2010 and [E], born in January 2014.Both parents hold degrees. The children's father is a minister of religion sponsored by his university to study for a doctorate. He states that due to his wife's ill-health and concerns about their daughter he was not able to complete this. He does hold a Master's degree. The judge accepted he had an established private life particularly because of his religious works. He came before the appellant

arrived in March 2013.She was accompanied by their first born, [D]. At that stage she would have been just over 2 ½ years of age. [E] was born in the United Kingdom. At the time of the hearing before the First-tier Tribunal Judge they were 8 and 4. The parents are not British nationals and the children are not qualifying children. This meant the family could not benefit from section 117 B 6.

14. The leave granted was valid until 30 January 2017. A further leave to remain application submitted on 10 February 2017 which was refused on 1 February 2018. This was then followed by the claim for protection made on the same day. The family did not have settled status.

15. Much of the appeal was taken up with the protection claim. In the course of this however details about the family situation where established. The judge recorded the submissions, which included references to the children. Paragraph 10(e) records the submission made by the appellant's representatives in relation to the best interests of the children.

    At paragraph 20 the judge refers to the appellant's human rights and refers to considering the totality of the evidence and the submissions made. The conclusion was that there would be no breach. At paragraph 21 the judge gives further details in relation to article 8. The immigration rules in respect of family and private life were not met. The judge accepts that the appellant and her husband had developed a private life in the United Kingdom. However, they did not meet the requirements of paragraph 276 ADE. The judge correctly said this was an important factor in considering matters outside the rules. The judge pointed out the absence of any legitimate expectation and the respondent's interests in maintaining and immigration policy.

16. The decision would have been strengthened had the judge specifically set out the position of the children. However, if the decision is read as a whole then the judge has had regard to the position of all members of the family. The judge had referred to having bundles from the appellant and the respondent which were taken into account. The judge at paragraph 15 made the point that the appellant and her husband are well educated and judge concluded the appellant would be able to find employment in Nigeria. The judge acknowledged there may be difficulties in starting again but the appellant has extended family who could be of assistance. The judge was not satisfied about the absence of medical treatment in Nigeria. Judge said at paragraph 16 children were too young to have integrated into UK society. The judge went on to say it was in their best interest to return as a family unit. It can be taken from this that the judge has concluded it would not be unreasonable to expect the family particularly the children to return.

17. The judge did not specifically refer to the public interest factors set out in section 117B but given that those factors on the facts stated would not assisted

the appellant and the appeal was not allowed the failure would not have made any material difference. Consequently, I do not find a material error of law demonstrated

Decision.

No material error of law in the decision of First-tier Tribunal Judge PA Grant Hutchison has been established. Consequently, that decision dismissing the appeal shall stand.

Francis J Farrelly
Deputy Upper Tribunal Judge.

Dated 23 May 2019