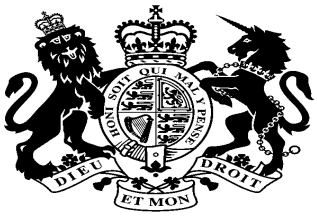

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12456/2019
HU/12457/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 29 July 2020 via Skype.	**On 17 August 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ABO
AZAA
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr G Brown instructed by Greater Manchester Immigration Aid Unit.
For the Respondent:	Mr A McVeety Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. On 11 November 2019 First-Tier Tribunal Judge Brookfield ('the Judge') dismissed the appeals of the above appellants on human rights grounds. Permission to appeal has been granted on a renewed application by a judge of the Upper Tribunal the operative part of the grant being in the following terms:

> "All grounds are arguable. In particular it is arguable that there was no evidential basis for the Tribunal's conclusion that the Appellants would be returning to Nigeria in possession of a £2000 assistance grant, or that the Appellant would be able to secure accommodation in Nigeria using the Internet; it is further arguable that in its Article 8 assessment the Tribunal failed to take material evidence about the lead Appellant's personal history into account."

Background

2. The first appellant is a female national of Nigeria born on 10 October 1991. The second appellant is her son, also a Nigerian national, born on 8 November 2018 who is dependent upon his mother's claim/appeal.

3. The first appellant claimed to have entered the United Kingdom on 31 March 2007 although the First-tier Tribunal Judge noted the respondent had no evidence of her legal entry into the UK. The first appellant applied for leave to remain on the basis of her human rights in August 2009 which was refused on 16 October 2009. A further application on human rights grounds made on 21 March 2011 was refused in April 2011. An application made on 10 July 2017 on the basis of family and private life was rejected on 10 July 2017. An application on 14 March 2019 for leave to remain in the UK outside the Immigration Rules was refused on 5 July 2019 which is the decision appealed before the First-tier Tribunal.

4. Having considered the available evidence the Judge sets out findings of fact from [7] of the decision under challenge (leading to the conclusion at [8(xxxiv)] that the respondent's decision is in accordance with the law and does not violate the article 8 rights of the appellants or their family members in the UK or violate section 55 of the Borders, Citizenship and Immigration Act 2009 in relation to the first appellant's son.

5. A chronology is set out at [2 – 6] of the appellants grounds seeking permission to appeal to the Upper Tribunal is in the following terms:

> 2. The Principle appellant [A] is a citizen of Nigeria who was born there on the 10 October 1991. She came to the UK to join her parents when she was aged 15 years old and lived as part of the 'family unit until 2014', when she was "severed" from the unit by reason of her family becoming destitute and the A as a result became homeless. By that time the A had developed important and strong family relations with her siblings [I] (dob 23.9.2006), [P] (dob 1.11.2007), and [PR] (dob 6.7.2012).
>
> 3. Despite her forced physical separation from her family A maintained close ties with her parents and siblings.
>
> 4. On the 8.11.2018 the A gave birth to her son the second appellant [A1].
>
> 5. On 24 July 2019 the A's mother and siblings were granted limited leave to remain under the provisions of the 10 year parent route under Appendix

FM. The A could not be included in that application because she was over the age of 18 at the time the application was made on 12 January 2019.

6. On 17 April 2019 an application to remain on human rights grounds on behalf of both the appellant's was sought, and the important background information relating to the A's immigration history was set out and in addition to asserting the "very significant" difficulties that the appellant would have in re-establishing her private life [as a lone single mother] it was made plain that with regard to her family life claim to remain, that she relied on the close/connections relationship with her siblings that her siblings best interests as well as her own, should be taken into account and there was specific reference to the case of **Beoku-Betts (FC) (Appellant) v SSHD [2008] UKHL 39** .

Grounds and submissions

6. The appellant relied on two grounds of challenge to the Judge's decision.

7. The first ground asserts the Judge failed to properly consider section 55 best interests of the appellant's siblings. At the date of the application [I] was 11 years of age, [P] was 10 years old and [PR] was 6. The grounds assert it is significant that at the date of the hearing all three were still minors and [I] and [P] have British nationality.

8. It is asserted the Judge had evidence from the siblings in the appellant's appeal bundle setting out the strength of family and private life with the first appellant and that it was submitted at the hearing that section 55 applied to all affected minors in this case; yet the Judge failed to properly direct herself in law and failed to consider section 55 best interests of all the affected children which it is claimed amounts to an error of law.

9. Ground 2 asserts the Judge has made an unsafe findings of fact. The appellant asserts the Judge's findings that each of the appellants could apply for financial help of up to £2000 each which could be used to pay for accommodation whilst she was looking for employment or to enable her to set up her own business was not available to the Judge as the appellant is not a 'voluntary returnee' and so is not eligible. The appellant asserts the Judge took into account a matter that should not have been taken into account. The grounds assert the Judge did not sign a declaration of voluntary return as required under the Voluntary Return Scheme (VRS) and that there was insufficient evidence before the Judge to show what package of support will be available to the appellants.

10. The grounds also assert that although the appellants were temporarily homelessness in the UK they were still being accommodated and financially supported and the Judges rationale that because they were homeless in the UK they can be homeless in Nigeria is said to be impermissible and an error of law. The appellant also asserts the suggestion by the Judge that she could and should conduct Internet searches for jobs and accommodation misses the point

that the appellant had stated she was unskilled would have no means to pay for accommodation and support her infant child.

11. It was submitted by Mr Brown, inter alia, The Judge failed to deal with the cultural context of family life and the fact that if a person's moves severs the family life which previously existed recognised by article 8 per se, that should be factored into the equation. It is argued the Judge did not take into account the fact the first appellant was with her mother until she was 13 and her grandmother one year after which he came to the United Kingdom to be reunited with her mother and father and siblings whom she stayed with until November 2014 when she had to leave. It was submitted that following a chaotic period in the first appellant's life she was rehoused in Manchester and that the Judge erred in not looking at family life in this context and the relationship the first appellant has with her three siblings two of whom are British citizens. It is argued that this was omitted from the section 55 assessment.

12. In relation to private life it is argued the Judge failed to assess the merits of this by reference to the historic background, the fact the appellant has no family in Nigeria, and that the submission regarding assistance from the VRS was not available to the Judge.

13. Mr Brown also submitted the Judge was required to consider siblings the siblings best interests as the appellant had spent a considerable time with them since arrival, yet in the Judge failed to do so. It argued the relationship between the siblings and the first appellant was not properly considered and that the first appellant controlled some of their development by indirect means which should have been factored into the equation in addition to the cultural issues.

14. The grounds further assert the Judge's finding there was no evidence placed before the Tribunal to suggest the appellant's father will be unable to contact his Nigerian siblings and arrange for them to assist is said to be unsafe as there was no evidence that the father would do such a thing. The appellant's evidence was that her father had lost contact with relatives in Nigeria.

15. The ground asserts the Judge ignored the geographical proximity of an opportunity to have physical contact with the relatives in the UK when finding there was no significant difference between the family life between the appellant and family in the UK as opposed to that if she was removed to Nigeria.

16. The ground asserts the appellant's case is that as a single mother she would, like other vulnerable women in Nigeria, be vulnerable to violence and have difficulties accessing work and would end up destitute. The ground asserts the Judge ignored important background material relating to women, child abuse, sexual exploitation of children, gender-based violence and human rights violations relating to the threat and scale of trafficking in the appellant's bundle

leading to the assertion the Judge had not adequately assessed the background material before her when assessing the level of the appellant's vulnerability on return given her gender, age, lack of experience and being a single mother with an infant child to take care of.

17. On behalf the respondent Mr McVeety submitted that the appellant was over the age of 18 and that Judge had considered the historical context and found that following the family being separated and moving apart in 2014 there had only been telephone contact and limited direct contact. It is argued this did not demonstrate before the Judge a close relationship and there was no evidence of dependency to show the respondent's decision is disproportionate.

18. Mr McVeety accepted the appellants financial reality and that she would be unable to fund the cost of frequent trips to see her family in the south, but it was not made out that other members of the family could not have visited her more frequently.

19. It was submitted the letter from the siblings says they love the first appellant but little more and nothing relevant to the section 55 point and nothing to warrant a finding in the appellant's favour on this issue.

20. Mr McVeety accepted that the suggestion the family might have £4000 was incorrect as the maximum sum is £2000. It was submitted that this did not enhance the right the appellant's claimed as it was open for her to return to Nigeria voluntarily when she would have been able to make an application for such funds. Mr McVeety submitted that it was always open to the appellant to return voluntarily to Nigeria. It was also submitted that even if such funds are not available the appellant had previously lived in Nigeria and it was found family was available to assist out as it had in the past.

21. In relation to article 8 ECHR, Mr McVeety submitted the Judge had recorded that the appellant was homeless in 2014 but had eventually been accommodated in the United Kingdom and was therefore aware that she was still being supported in respect of certain aspects of her life. It was disputed that the Judge was saying that because this happened in the United Kingdom she shall benefit from the same in Nigeria.

22. It was submitted there was no evidence to support a conclusion that there would not be at family help available to the appellants in Nigeria. Her son is not a qualifying children pursuant to paragraph 276 ADE.

23. It was submitted adequate reasons were given and it was also accepted that if the appellant had lived in the same house as the family members it may warrant a different conclusion, but this was not the situation presented to the Judge on the facts.

Error of law

24. I do not find it made out that the Judge did not properly take into account any aspect of the evidence. Even accepting that the Judge erred in finding the appellant will be in receipt of £4000 assistance grant under the terms of the VRS, as the first appellant had not agreed to return voluntarily, no arguable material legal error is established.

25. So far as the siblings are concerned, the evidence available to the Judge is found in the respondent's bundle at page 37 and the appellant's bundle at page 6 in relation to [P] and at page 32 of the respondent's bundle in relation to [I].

26. Within the papers are letters written by both [I] and [P]. The letter written by [I] is undated and reads:

> "To whom it may concern. Sister is my good friend she has been their for since I was young. She was always their for me. She's my 2nd mom. Every time we were together we would always have a laugh and have a great time. I love it when I am around her because I feel safe, comfortable, and watched over. Most of the time even when it's not a special time or special occasion, she loves to take us out like creams, McDonald's, KFC or fancy restaurant. I am grateful that I have her as my sister. And don't think I could get a better sister than her. Anytime I need help with writing something or reading something she would always help me. Any time my parents were busy and I needed help with my homework she would always have time for me and she makes sure I get it right. She is the best! I would really appreciate it if there's any way you can help my sister [A] to obtain her freedom in this country. Yours sincerely [IO]".

27. Letter from [P] is dated 22 February 2019 and reads:

> "To whom it may concern,
>
> My sister is the best this neat writing I am writing now is what she taught me. Since I was a young toddler she taught me to do good things and when I was bored or not happy she would cheer me up. I also feel safe and comfortable around her. She always plays with me of course my parents would do this for me. My sister was my second mum and also one of my best friend. She is cool and popular. I am now 11 years of age and I am a mini version of her. She loves fashion and I do too, of course I would get told at some time for doing the wrong thing but at the end of the day it's for my own future and benefit. I love her so much she buys me everything. She such a lovely person. When my parents are busy on holidays she will look after me and be the one to take us out and watch over us. She has time for me and likes me to achieve and for me to be like her. She's a good person people know her as a good person ever since I was growing up she has looked after me and has been a star people also love her because of her personality. I have now grown up and everyone compares me to her I love her lots and she always claps my hair. I don't think I could get a better sister than her I am so grateful, I love her.
>
> I'll be very happy and grateful if you can do anything to help her obtain her stay in this country. May God bless you and your family.
>
> Yours sincerely

[PO]

28. A representatives letter of 17 April 2019 referred to the presence of siblings in the United Kingdom and, after outlining the appellant's immigration history, contains the following "*in essence our clients application is based on 2 issues. It is based on her inability to live in Nigeria as a lone woman with a very young child, our assertion being that this is not in the best interests of the 2nd applicant. It is also based on the best interests of her siblings, 2 of whom are British.*" The letter further repeats the appellant has a close connection with her siblings and refers to the decision in Beoku-Betts which found that the article 8 rights of all family members affected by a decision have to be taken into account and asserts that it is not in the best interests of the siblings that the appellant be removed from the United Kingdom.

29. The first appellant's claim claims regarding her siblings was considered in the Reasons for Refusal letter but not found to warrant a grant of leave on this basis. The decision-maker writes:

> "Consideration was given to your relationship with your siblings [I], [P] and [PR] who are British citizens. It was presented to you are providing them with help and advice on their issues. However, you do not have parental responsibility for them, since they reside in the UK with your (and their) mother. It is therefore noted that if you were to have to leave the UK, they could continue to reside here. The refusal of your application does not separate any children from their biological parents, and does not obligate your siblings to leave the UK.
>
> It has also been considered whether the particular circumstances constitute exceptional circumstances which, consistent with the right to respect for private and family life contained in Article 8 the European Convention on Human Rights, might warrant consideration by the Secretary of State of a grant of leave to remain in the United Kingdom outside the requirements of the Immigration Rules. We have also taken into account the need to safeguard and promote the welfare of children in the United Kingdom in accordance with our duties under section 55 of the Borders, Citizenship and Immigration Act 2009.
>
> It is generally the case that it is in a child's best interests to remain with their parents. Unless special factors applied, it will generally be reasonable to expect a child to leave the UK with their parents, particularly if the parents have no right to remain in the UK.

30. In Afzal v Secretary of State for the Home Department [2012] EWHC 1487 (Admin) Mr Justice Wyn Williams said ordinarily, the child or children whose welfare was to be considered under section 55 would have a family connection to the person who was the subject of the decision in question; in this case the children had no family relationship with the Claimant. It was to be noted, however, that the words of section 55 were extremely wide and required the SSHD to have regard to the need to safeguard and promote the welfare of the children taught by the Claimant when making her decision about whether he ought to be granted leave to remain. To hold otherwise would be to restrict the

ambit of section 55 in a manner not easily consistent with the words of the section.

31. As asserted by the appellant, the Judge was required to consider the best interests of the appellant's siblings as children with whom the first appellant has a family connection and whose relationship will be affected if the first appellant's removed.

32. The failure of the Judge do so may amount to legal error but I do not find it established it is material to the decision to dismiss the appeal in this case as the appellant failed to adduce sufficient evidence to establish that the best interests of the siblings meant the effect of the appellant's removal upon those children would make the decision disproportionate or contrary to section 55. It was particularly not made out the first appellant could not maintain indirect contact with her siblings or that the siblings would lose the secure environment they have with their parents in the United Kingdom if the appellant were removed. It is noted the letters from the first appellant's siblings and her own mother contain an address in Waltham Cross whereas the appellant lives at an address in Salford near Manchester, approximately 200 miles away.

33. The specific paragraphs of the Judge's findings referred to in Ground 2 are (xi), (xii) and (xv) which form three of the 34 subparagraphs of [8] of the decision under challenge. In those 3 subparagraphs the Judge writes:

> (xi) The appellants both have Nigerian nationality and would be able to enjoy the benefits of their nationality in Nigeria. Although the first appellant advised she has no home to return to in Nigeria, I note she and her son are both homeless in the UK. There was no evidence placed before me to indicate the first appellant would be unable to use the Internet in the UK to search for suitable accommodation for herself and her son in Nigeria prior to her departure to Nigeria.
>
> …
>
> (xii) I note that the first appellant's mother came to the UK and left her in the care of her great-grandmother. When her great-grandmother died, the first appellant went to stay with her paternal uncle until her passage to the UK was arranged. I find this establishes that the first appellant's family in Nigeria have an interest in her welfare. The first appellant advises that though she does have a number of family members living in Nigeria, she is not in contact with them. She advises her father is in contact with his brother in the UK and with his brother in the USA. With his siblings in Nigeria. I did not find it credible that the appellant's father would cease contact with his Nigerian siblings and their families. There was no evidence placed before me to suggest the appellant's father, would be unable to contact his Nigerian siblings and arrange for them to assist the first appellant to find suitable accommodation for herself and her son in Nigeria. I find the first appellant will be able to search for accommodation in Nigeria.

…

(xv) The appellants could apply to the Home Office for financial help of up to £2000 each which could be used to pay for accommodation whilst the first appellant is looking for employment, or to enable her to set up her own business in Nigeria. I accept the first appellant is not highly educated, but note she has a qualification in childcare which suggests she may be able to set up a business in Nigeria as a childminder. I note that the first appellant has lived in the UK since 2007 and was wholly supported by friends and family until she was provided with interim financial support and accommodation in December 2018. This shows the first appellant has a significant degree of fortitude and is able to survive in a country where even she has no official support and no right to work. The first appellant's mother continues to provide her and her son with money and groceries and her mother advised that the appellant's friends in Manchester also continued to support her. I find that her family and friends will be able to transfer the support they provide to her in the UK to Nigeria until the first appellant obtains work or sets up a business in Nigeria.

34. The appellant also asserts the Judge failed to consider country information relied upon, but it is clear from reading the decision as a whole that the Judge did take this evidence into account. At subparagraphs (xvii) and (xviii) the Judge writes:

(xvii) The appellant's representative referred me to page 35 of the appellant's bundle which is the section on women in the USSD report of March 2019. This makes reference to rape, domestic violence and female genital mutilation. It advises the victims and survivors of violence are entitled to comprehensive medical, psychological, social and legal assistance by accredited service providers and government agencies. The prison sentence for persons convicted of rape is up to 14 years, and the identities of rape victims are protected. It was no evidence before me to suggest there is a reasonable degree of likelihood the first appellant will be subjected to rape or domestic violence, FGM, or that the Nigerian authorities will be unable or unwilling to protect her should she fall victim to violence in Nigeria.

(xviii) I was directed to pages 57 – 59 of the appellant's bundle which made reference to trafficking of women and girls. There was no evidence placed before me to indicate the first appellant, as a mother, would be targeted for trafficking. I noted this appellant has not sought asylum in the UK either because she believes she would be a victim of violence or rape, or trafficking. I did not find the background evidence cited by the appellant's representative established that there was a reasonable degree of likelihood this appellant would face domestic violence, rape, female genital mutilation or be at risk of being targeted for trafficking on her return to Nigeria. I note the first appellant has not considered it necessary or appropriate to apply for asylum in the UK over the last

> 10 years, and that she has had considerable interaction with the respondent in relation to applications for leave to remain in the UK. I consider that if the first appellant considered herself to be at risk if returned to Nigeria, she would have applied for asylum.

35. At paragraph (xx) the Judge finds it had not been established there are any exceptional circumstances preventing the appellant from being returned to Nigeria. It was not found she met the requirements of paragraph GEN.3 of Appendix FM of the Immigration Rules.

36. In AI (Nigeria) v SSHD [2007] EWCA Civ 707 the Tribunal found that levels of discrimination against women in Nigeria could not on the evidence before the Adjudicator amount to persecution. The Court of Appeal agreed that there was no evidence on which a finding of a well-founded fear of persecution, as opposed to mere discrimination, could be made.

37. In relation to domestic violence, in R (on the application of M Umar) v SSHD 2008 EWHC 2385 (Admin) Patterson QC said that the objective evidence suggested that there might be some codification and acceptance of violence by men to their wives in Nigeria, with consequent police inaction. However, there was no evidence that this extended to violence by the wider family. Accordingly there was a sufficiency of protection against such an incident in Nigeria. The claim that the police would not act had not been tested because the claimant had not reported the violence. Given the size of Nigeria, the fact that people did move within the country and the lack of evidence that the appellant would be pursued, internal flight was an option for the appellant.

38. The Judge finds the appellant will have access to family and a support network in Nigeria and the claim to the contrary is disagreement with this position no more.

39. The Judge was aware of the first appellants procedural history and the reasons why she could no longer live with her family in 2014 and how attempt by the first appellant to live with her family before she was rehoused in Manchester proved unsuccessful as a result of action being taken by the local authority as she was, at that time, over the age of 18. There does not appear to have been any successful challenge to the decision of the local authority on the basis their actions were a disproportionate interference with an article 8 right by their insistent the appellant could not remain with the family unit.

40. It is not disputed the appellant was assisted in finding accommodation in Manchester where she lives with us her son. I accept that family life exists between the first appellant and this child and that the best interests of the child are, as found by the Judge, to be brought up by its mother, the first appellant.

41. The Judge did not find family life recognised by article 8 existed between the first appellant and her siblings for which adequate reasons are given. The letters from the siblings do not support an ongoing relationship at the date of the

hearing before the Judge between the first appellant and the siblings or even the first appellant and other family members in the United Kingdom sufficient to find family life recognised by article 8 exists. The necessary element of dependency, emotional, financial, or otherwise, was not made out before the Judge.

42. Even considering the cultural context of family life which, if the first appellant remained in the family home, would have possibly involved having a more direct hands-on involvement with her siblings, this was not the situation prevailing before the Judge.

43. Whether family life exists is a question of fact. On the basis of the evidence before the Judge it was not made out that, whilst de facto family life exists, the nature of the relationships was sufficient to support a finding that family life recognised by article 8 did. Accordingly, no material error arises in the Judge so finding.

44. The finding in relation to availability of support on return has not been shown to be infected by arguable legal error. Whilst it is accepted the first appellant lived with her grandmother before coming to the UK and considering Mr Brown's submissions that events that occurred which led the appellant coming to the United Kingdom does not suggest the appellant had the type of family support available then sufficient to look after her, the Judge was required to assess the situation existed on the basis of the evidence available at the date of the hearing. The Judge specifically rejected the suggestion that the appellant would not have family support for the reasons given and that has not been made out to be a finding outside the range of those reasonably open to the Judge on the evidence.

45. I do not accept Mr Brown's submission that there was just enough in the grounds to such say the Judge had erred in dealing with family life, the siblings, and in finding that support will be available on return. The Judge considered the evidence adequately and makes finding supported by adequate reasons. Whilst the appellant disagrees with the same has not been shown the Judge's decision is infected by arguable legal error material to the decision to dismiss the appeal. Accordingly, the decision must stand.

Decision

46. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

47. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 10 August 2020