Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/23979/2018
HU/23946/2018
HU/23951/2018
HU/23971/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20th November 2019	**On 14th January 2020**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR GGL (FIRST APPELLANT)
MRS TUL (SECOND APPELLANT)
MR CDL (THIRD APPELLANT)
MISS PML (FOURTH APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms S Iqbal, Counsel instructed by W H Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

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. The order is made because there are minors involved.

1. The appellants appealed against the determination of the First-tier Tribunal dated 12th November 2018 dismissing their appeal against the Secretary of State's refusal of their human rights claim on 12th November 2018.

2. The appellants, Nigerian nationals born in 1984 and 1985, are husband and wife and their two children born in 2015 and 2018. The first appellant entered the United Kingdom as a student in 2011 and his wife entered as his dependent in 2014. Their leave expired on 18th October 2017 but on 22nd September 2017, they made an application on human rights grounds for leave to remain which was refused and ultimately generated this appeal.

3. The grounds of appeal to the Upper Tribunal were as follows

   (i) that the judge had gone beyond the limitation of the grounds of appeal to the First-tier Tribunal and failed to properly consider the human rights claim. It was accepted that no protection claim was made and that the claim was limited to human rights grounds only and that was a matter which was confirmed by Counsel at the hearing. That, however, did not mean that the events on which proper and credible protection claim could have been made were irrelevant and the claim was based on those same events which should have been considered against a different test, that being paragraph 276ADE. The events referred to and relied on were such that there would be very significant difficulties to their return and integration in Nigeria. The judge failed to determine all matters raised by the appeal and it was arguable that the outcome of the appeal may have been different had the judge considered the appeal within the context of the Rules.

   (ii) the judge failed to have regard to relevant policies which rendered the decision potentially unlawful. The judge failed to have regard to the Secretary of State's policies and give anxious scrutiny to the human rights claim as there was no reference to the Secretary of State's policy document.

   (iii) there was a material misdirection on material matters. The judge was required to apply the correct threshold when considering whether Article 8 of the ECHR was engaged. Failure to refer to the Secretary of State's relevant policy documents and country information provided a significant barrier to the judge's ability to conduct the

required best interests test. In giving substantial weight to the public interest question and maintaining immigration control the judge failed to give any consideration to the absence of any public interest removal from the UK of those genuine and subsisting parental relationships with a qualifying child and failed to have regard to the importance of freedom of expression.

(iv) The judge gave inadequate reasons. The first appellant made specific reference to the EASO report of Country Guidance: Nigeria (AB261 to 322) as supporting his assertions and the judge provided no reasons for failing to give any weight to this document. Insofar as the judge's comments regarding "bare assertions of difficulties" may relate to employment, the Secretary of State's own policy documents on internal relocation the Country of Origin Information Report: Nigeria March 2019 (see paragraph 4.1.1 AB345) CPIN (AB339 to 353) referred to another EASO report, and would therefore fall for disclosure in its own right and added weight to the EASO report. The socio-economic report corroborated the first appellant's supposedly bare assertion with regards to the difficulties obtaining employment, the rising trend in unemployment. Another EASO report regarded the targeting and individuals in Nigeria and provided further background information regarding the indigene settlers issue relevant to the human rights claim.

Analysis

4. I take the grounds together as they are intertwined.

5. At paragraph 2 the judge recorded at the outset of the appeal that the appellant's representative, Mr Mupara, made clear that he was only seeking to argue the appeal on the basis of Article 8 ECHR outside of the Immigration Rules. He made plain that he was not seeking to rely on private life provisions of the ECHR within the Rules.

6. Although the grounds and the submissions of Ms Iqbal submitted that the judge should have considered paragraph 276ADE with reference to very significant obstacles it was made clear that the protection issue was not pursued. Indeed, as the judge records at paragraph 4 of his determination the appeal was not being argued within the Immigration Rules either but outside those Rules.

> "*On behalf of the First Appellant it was argued that his circumstances and those of his family were exceptional and that it was appropriate to look at Article 8 outside of the Rules" [4].*

7. The Record of Proceedings of the hearing on 21st June 2019 record that exactly and state, "*No protection claim*" "*only outside the Immigration Rules*".

8. In passing, I observe that that submission itself indicates that there were no very significant obstacles to return to Nigeria, as encapsulated by the Immigration Rules at Paragraph 276ADE(1)(vi). This particular rule sets out as follows:.

> '276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
>
> (i) does not fall for refusal under any of the grounds in Section S-LTR 1.1 to S-LTR 2.2. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and
>
> (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
>
> ...
>
> (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK'.

9. It is not open to the appellant once the representative has specifically declined to rely on Paragraph 276ADE (vi) to raise it again in the grounds of appeal.

10. The judge, nevertheless, appropriately directed himself in relation to the relevant case law, in particular **R (Agyarko)** [2017] UKSC 11 and **KO (Nigeria) [2018] UKSC 453**. **R (Agyarko)** [2017] UKSC 11 emphasises the test of 'unjustifiably harsh consequences' to be applied when considering a challenge under Article 8 on human rights grounds the refusal of leave to remain or removal. That is the test the judge clearly applied.

11. It is not made out, from a careful reading of the decision as a whole, that the judge failed to consider all the relevant factors. The judge at paragraph 7, found the first appellant had visited various countries since his birth in 1984 because his father was a diplomat and had returned to Nigeria from time to time between the ages of 17 to 27 years. (He is now in his thirties). He had various family members such as his mother father and sibling who lived partly in Nigeria and partly in Senegal. His wife also had relations in Nigeria. The first appellant was a mechanical engineer, with a PhD from Brunel University and with work experience and his wife an architect who also had work experience.

12. The judge noted that he had regard to all of the evidence and there is no indication that the judge failed to consider the Country Policy Information Note on Nigeria March 2019 and the references within the reports to poor socio economic factors could hardly be said to apply to the appellants

bearing in mind their high degree of education and work experience. Indeed, the CPIN referenced that Nigeria had made significant progress in socio economic terms since 2005.

13. There is no doubt that the judge did address the points made regarding difficulties in securing employment and considered the evidence in the round and gave adequate reasoning for his findings. This can be gleaned from the consideration at paragraph 7 that: -

> "*The First Appellant has been outspoken on issues, of which it is said at least there would be a dim view taken by the state authorities and that it would make finding employment, both in the state sector but also in private industry, because of its close relationship to the state's involvement in many contracts of works, that he has given his expertise, in waste management would find it difficult to work*".

14. At paragraph 8 the judge recorded: -

> "*but also it was not being argued with reference to Article 8 as an additional consideration as to why he could not return, so much as it illustrated why he might find difficulties on return in finding employment and making a life for himself and the family there*".

15. The judge evidently did not accept that the appellant would be unable to access work owing to his sympathies for the Fulani nomadic people from the North of Nigeria, commenting as he did on the first appellant's returns to Nigeria and specifically records at paragraph 14: -

> "*I concluded, having considered all the evidence in the round, that the difficulties envisaged on a return to Nigeria did not do more than reflect to a degree unenquired into matters and concerns which remain unsupported. Therefore, the significance of the views that the First Appellant had expressed in relation to Fulani did not seem to me, on the face of it, to have given any cause for him to leave nor <u>any difficulties as a fact returning as a visitor,</u> bearing in mind he remained a Nigerian national*".

16. The judge also recorded, however, that the second appellant was a qualified architect but worked at Tesco on the customer services side in the UK and that, implicitly, even if the first appellant could not work, that it would be "*uncertain as to whether or not there would be any impact on her from the First Appellant's return*". Indeed, as stated by the judge there was no statement produced by the second appellant. As the judge observed: -

> "*Neither the First nor the Second Appellant have investigated alternative education and it seemed they have not wished to contemplate a return to Nigeria: No steps have been taken to try*

and discern what, if any difficulties might arise in Plateau State or elsewhere in Nigeria".

17. Following **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)** judges need to resolve the key conflicts in evidence and explain in clear and brief terms their reasons for preferring one case to the other so that parties can understand why they have lost. That is what the judge did. It is not incumbent upon the judge to address every piece of evidence.

18. In relation to ground (ii) there was significant material on the first appellant's blogging and a series of reports in the documentary bundle served by the appellants. None of the background material was specific to the first appellant and there was no indication of previous harm to the first appellant nor to his family who remain in Nigeria. That said the judge recorded in his Record of Proceedings "No protection claim". Had the first appellant wished to rely on a protection claim fearing harm to himself or his family it was open to him to raise the matter as a "new issue" further to Section 85 of the Nationality, Immigration and Asylum Act 2002. He did not do so. The first appellant also stated in his witness statement that he did not wish to claim asylum because he wished to return to Nigeria at some point. Indeed, as recorded by the First-tier Tribunal Judge the appellants' extended family remained in Nigeria and there appeared no evidence of difficulty for them in doing so.

19. The appellants were legally represented through the proceedings and it is a basic tenet of asylum and humanitarian protection law that the standard of proof for proving a well-founded fear of serious harm is to the lower standard (**R v The Secretary of State for the Home Department ex parte Sivakumaran [1988] AC 958**. Under Article 8 (and the immigration rules) it is for the first appellant to prove the facts of the difficulties on the balance of probabilities. Having failed to press his claim on the lower standard of proof, any weight to be given to his assertion that there would be very significant obstacles or rather unjustifiably harsh consequences owing to his political activity, would be limited, but even so, as I have pointed out at paragraph 7 of his determination, the judge did address this point.

20. At paragraph 9 the judge detailed the extensive education that the first appellant and his interest in generating renewable energy for rural Nigerian communities using waste and in particular: -

> "*Much of the First Appellant's statement related to the fears he has arising from his past political activities in ng but those are not issues, as I was informed, that were being pursued in front of me for the purposes of the appeal.*" (Emphasis added.)

21. Even without the above reasoning it should be emphasised that the test for demonstrating very significant obstacles is an exacting one as

explained by Underhill LJ in **Parveen v The Secretary of State [2018] EWCA Civ 932**

22. Underhill LJ in **SA (Afghanistan) [2019] EWCA Civ 53** gave further guidance on integration at paragraph 36 and also the approach of the Tribunal when assessing errors of law:

> *"As Sales LJ made clear in Kamara v. Secretary of State for the Home Department [2016] EWCA Civ 813; [2016] 4 WLR 152 at [14]:*
>
> > *The idea of 'integration' calls for a broad evaluative judgment to be as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individuals private of family life.*
>
> *Later in the judgment, at [18], he added this:*
>
> > *[The tribunal's] decision is to be read looking at the substance of the reasoning and not with a fine-tooth comb or like a statute in an effort to identify errors. In giving its reasons, a tribunal is entitled to focus on the principle issues in dispute between the parties, whilst also making it clear that it has considered other matters set out in the legislative regime being applied."*

23. In essence it was argued that the judge had failed to address the reports but the judge clearly found that if the first appellant concluded that there was insufficient risk such that he did not make a protection claim, that claim would not feature as the principal element in assessing very significant obstacles or unjustifiably harsh consequences. Despite Ms Iqbal's valiant attempts to argue otherwise, I cannot agree that the judge erred in law by failing to cite the Country Policy and Information Note: Nigeria Internal relocation March 2019, specifically and specifically follow the Secretary of State's guidance on Family Migration: Appendix FM Section 1.0b: Family Life (as a Partner or Parent) and Private Life: 10-Year Routes :Version 4.0 particularly at page 58, into his analysis.

24. At page 58 the Family Migration guidance states: -

> *"A very significant obstacle <u>may</u> arise where the applicant would be at a real risk of prosecution or significant harassment or discrimination as a result of their sexual or political orientation or faith or gender or where their rights and freedoms would otherwise be so severely restricted as to affect their fundamental rights and therefore their ability to establish a private life in that country.*

The decision maker should consider whether the applicant has the ability to form an adequate private life by the standards of the country of return – not by UK standards. The decision maker will need to consider whether the applicant will be able to establish a private life in respect of all its essential elements, even if, for example their job, or their ability to find work, or their network of friends and relationships may be differently constituted in the country of return.

The fact the applicant may find life difficult or challenging in the country of return does not mean they have established that there would be very significant obstacles to integration there."

25. As indicated the answer to this assertion is the judge's finding at paragraph 8: -

> "*Whilst it seems the First Appellant at one state sought to make a protection claim, it was explicitly said to me that there was no such reliance on any claim of that nature, which has not in fact been considered by the Secretary of State, but also it was not being argued with reference to Article 8 as an additional consideration as to why he could not return, so much as it illustrated why he might find difficulties on return in finding employment and making a life for himself and the family there.*"

26. In my view the arguments that were available to the appellants now attempted to be raised under paragraph 276ADE were properly and sufficiently addressed by the First-tier Tribunal but the fatal blow to the appeal is that Paragraph 276ADE was not argued by the appellants before the First-tier Tribunal.

27. In relation to the third ground it is simply not arguable that the best interests of the children were not properly considered or that the just misdirected himself when finding the following: -

> "*4. On behalf of the First Appellant it was argued that his circumstances and those of his family were exceptional and that it was appropriate to look at Article 8 outside of the Rules. I therefore set the claim in the immediate context of the best interests of the children, non-British nationals, in the context of Zoumbas v Secretary of State for the Home Department [2013] UKSC 74. It seemed to me the unchallenged position was whatever, (sic) the benefits may be of access to education and health services in the UK that in terms of the legislation and in fact, the best interests of the children lay in being with their parents, be it in the UK or Nigeria.*
>
> *5. They are young children and the eldest of the two has just started in nursery school whilst the second child is effectively a baby.*"

28. The grounds are misguided in the criticism of the judge's assessment of the public interest in removal seemingly overlooking Section 117A which states as follows: -

> "*117A Application of this Part*
>
> *(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –*
>
> *(a) breaches a person's right to respect for private and family life under Article 8, and*
>
> *(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.*
>
> *(2) In considering the public interest question, the court or tribunal must (in particular) have regard –*
>
> *(a) in all cases, to the considerations listed in section 117B, and*
>
> *(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.*
>
> *(3) In subsection (2), 'the public interest question' means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).*"

29. As conceded in the grounds, these children are not qualifying children and, even so, the judge did refer himself to **KO (Nigeria)**, finding at [4] that their best interests were to remain with their parents and who were well-educated and had extended family in Nigeria. The judge pointed out there was no statement produced by the second appellant concerning the children or the implications on them for their return, or any such difficulties she felt about such an option. The judge was entitled to rely on that absence. Both children were identified as young, the eldest just starting nursery school whilst the second is 'effectively a baby' [5]. Those findings were unarguably open to the judge.

30. In relation to ground (iv) there is an assertion that the judge failed to direct himself properly and give adequate reasoning.

31. I refer to reasoning above with regards the reports and repeat that the judge confirmed that he had taken all the evidence in the round and specifically addressed himself to the significance of the views that the first appellant had expressed in relation to the Fulani_which the judge found "did not seem to me, on the face of it, to have given any cause for him to leave nor any difficulties as a fact returning as a visitor, bearing in mind he remained a Nigerian national". That was a succinct but apposite finding. In the light of the particular circumstances relating to the appellants, the judge clearly found their assertions as to their plight on return to be just that – assertions - and the reports did not assist in furthering their claims.

32. As he was obliged to do the judge took into account Section 117B of the Nationality, Immigration and Asylum Act 2002 but concluded, "There was, on the face of it, no obvious reason why two intelligent adults, well qualified and educated, would be a burden on the United Kingdom", but weighing in the balance and that the public interest question maintaining immigration control was a significant one and although empathy should be afforded to the appellants' circumstances, "theirs was not a case which has any particular merits". That was an adequately reasoned finding.

33. Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, which in this case it does, having regard to the material accepted by the judge, *Shizad (sufficiency of reasons: set aside)* [2013] UKUT 00085 (IAC)

34. This is a specialist Tribunal and as reiterated in **UT (Sri Lanka) [2019] EWCA Civ 1095** at paragraph 26: -

> "*In R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19, Lord Hope said (at paragraph 25):*
>
> > *'It is well established, as an aspect of tribunal law and practice, that judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined. The appellate court should not assume too readily that the tribunal misdirected itself just because not every step in its reasoning is fully set out in it.'*"

35. I find no error of law in the decision and it will stand. The appeal remains dismissed.

Signed Helen Rimington Date 9th December 2019

Upper Tribunal Judge Rimington

The Decision has been amended further to Rule 42 of The Tribunal Procedure (Upper Tribunal) Rules 2008 to include an anonymity direction

Signed Helen Rimington Date 9th January 2020

Upper Tribunal Judge Rimington