Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/16854/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 June 2019	**On 14 August 2019**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

NA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In Person
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant appeared in person before me but has been assisted in the proceedings by a charity, Caring Outreach International Charity ("COIC"), and was assisted at the hearing by Bishop Gabriel Olasoji.

The appellant is a citizen of Nigeria born on 17 January 1985. She arrived in the UK on 28 August 2007 with entry clearance as a student, her leave thereafter having been extended until 12 April 2013.

On 4 August 2017 she made a human rights claim in an application for leave to remain. That application was refused in a decision dated 9 July 2018. The appellant appealed against that decision and her appeal came before First-tier

Tribunal Judge Onoufriou ("the FtJ") at a hearing on 14 March 2019 following which the appeal was dismissed. This is the appellant's appeal against the FtJ's decision.

The FtJ's decision

The basis of the appellant's appeal before the FtJ was in terms of her family and private life. The FtJ referred to the appellant's spouse having entered the UK on 21 April 2011 with leave to enter as a Tier 4 Student Dependant, with extensions of stay as the appellant's dependant. The appellant has three children, born on 26 April 2011, 9 January 2013 and 26 February 2015. The appellant's husband is not the father of her third child.

The FtJ referred to COIC having provided letters in support of the appeal. A letter of 6 March 2019 refers to the appellant and her family relying on compassionate grounds outside the Immigration Rules, stating that the appellant and her spouse are required to help COIC with their voluntary charity work. It was also pointed out on the appellant's behalf that their child, F, was aged 7 years and 11 months at the date of the hearing and had never been outside the UK.

The FtJ referred to the respondent's decision, which was to the effect that neither the appellant nor any of her family were able to rely on Appendix FM because none of them are British, settled in the UK with refugee or humanitarian protection leave, and as they lived as part of a family unit together they would either remain in the UK together or be removed together.

The FtJ went on to note that the respondent considered the appellant's claim in terms of her and her family's private life, under paragraph 276ADE(1). He concluded that the appellant was not able to meet the requirements of that paragraph and she had not shown that there would be very significant obstacles to her or her family's integration into Nigeria. He noted that she and her spouse had lived in Nigeria until the age of 22 and 27, respectively. Thus, they were both "totally familiar" with Nigerian culture and society, which would assist them to re-integrate there and help their children to adapt to life in Nigeria. The FtJ went on to state that they had not provided any medical evidence to show that they are unfit to take up employment if they returned there and nor had they provided any evidence to show that they would not have friends or relatives who would be able to support them on return.

At [16] he noted that all three children were born in the UK and had never left. The FtJ referred to the grounds of appeal stating that F was aged 7 years and 3 months when the application for leave to remain was made but in fact he was aged 6 years and 3 months at the date of the application. Thus, F could not meet the requirements of para 276ADE(1)(iv) but the FtJ said that because he was aged 7 years and 11 months at the date of the hearing, that was a factor to be taken into account when considering his right to private life under Article 8 outside the Immigration Rules.

The FtJ also found that F had not lived continuously in the UK for at least seven years immediately preceding the date of the application and thus para EX.1. of Appendix FM did not apply.

He went on in the same paragraph to refer to the appellant's other children being younger and clearly therefore, not able to satisfy the Immigration Rules.

In terms of whether there would be very significant obstacles to their integration, pursuant to para 276ADE(1)(vi) he found that there would not be, as they would be returning with their parents who would be able to provide proper emotional and physical support. He referred to English being widely spoken in Nigeria and thus they would be able to assimilate into the education system there. He concluded that they were also young enough to adapt easily in this respect and there was nothing in their physical or mental health which presented any significant obstacle to their return. He noted that they were moving to a different culture but concluded that that was not uncommon in terms of children moving to other countries with their parents.

At [17] the FtJ went on to refer to the best interests of the children and s.55 of the Borders, Citizenship and Immigration Act 2009 ("the 2009 Act"). He said that their best interests were a primary consideration although not a paramount consideration. He considered s.117B(6) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). He found that F was a qualifying child under the 2002 Act, given that he had lived in the UK for a continuous period of seven years or more. He identified the issue as being whether it would be reasonable to expect F to leave the UK, both within the context of s.117B(6) and s.55 of the 2009 Act. He stated that as he is the eldest child and has lived here longer, the effect of his removal would be the first issue to be resolved, given that there were no particular factors relating to any of the three children individually. He concluded that if it was reasonable to remove F to Nigeria then there were no sustainable arguments for not removing the other two children.

After referring to case law, the FtJ said at [20] that F was now just one month short of his eighth birthday. He was born in the UK and had never been to Nigeria, and had been through the education system in the UK. He concluded that his best interests, and consequently those of his siblings, would be best served if he remained in the UK. However, he referred to the need to balance that against the public interest.

Citing *MA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 705, he referred to the judgment of Elias LJ at [46], summarising it in stating that it is likely to be highly disruptive if a child is required to leave the UK but that that may be less so when the children are very young because the focus of their lives will be on their families.

The FtJ went on to state that the assessment of 'reasonableness' in *MA (Pakistan)* referred to children who have been in the UK for seven years or more. He noted that the younger the child the less disruptive removal would be. The FtJ found that as F was born in the UK and was just short of 8 years old, he was at the younger end of the scale in terms of those assessments. He

concluded that it was not unreasonable to expect F to leave the UK, and thus for his two siblings to be removed with him, with their parents.

The grounds of appeal and submissions

The grounds of appeal, drafted by COIC, refer to the three children and their ages, and the need to consider the children's best interests. Reference is also made to *EM and Others (Returnees)* Zimbabwe CG [2011] UKUT 98 (IAC) and what is said about the residence of children for a period of seven years or more. The grounds continue that refusing F leave to remain in the UK would be "a great error(s) of law" and the parents could not be separated from the children. The grounds do not actually identify, or purport to identify, any error of law in the FtJ's decision.

The First-tier Tribunal Judge granting permission did so on the basis that it was arguable that the FtJ had attached "insufficient weight to the degree of integration across the social cultural and educational spectrum recognised by the benchmark policy period of seven years adopted in the Immigration Rules and enshrined in statute".

The grant of permission continues that it is arguable that insufficient weight had been attached "to the consequences of complete deracination" and it was arguable that too much weight had been attached to the factors appertaining to integration into a country to which F has never gone. It is lastly said in the grant of permission that it was arguable that the FtJ had attached too much significance to the finding that F is at the younger end of the scale, given the "benchmark policy period".

Given that the appellant was unrepresented before me but appeared with the support of Bishop Gabriel Olasoji, I sought submissions from Mr Bramble first in order to allow the appellant the opportunity to respond to his submissions.

Mr Bramble referred to the fact that the appeal was dealt with on the papers. The FtJ identified at [10] the documentary evidence that he had before him. The issue was in relation to the eldest child, who was over 7 years of age at the date of hearing. It was submitted that the FtJ had identified the issues to be determined and had looked at all matters in his fact-finding. He had considered the best interests of the children.

I was referred to *KO (Nigeria) & Ors v Secretary of State for the Home Department* [2018] UKSC 53, in particular at [19] and what was said about the need to consider 'reasonableness' in the context of the real world in which the children find themselves.

The FtJ had found at [20] that it was not unreasonable to expect F to leave the UK. The FtJ was aware of F's age and that he had been born in the UK. Their parents' status was relevant, however, and they would be returned as a family unit.

In reply to Mr Bramble's submissions the appellant said that she thought that the FtJ had applied the law wrongly. She referred to F having been born in the UK and having spent the first seven years of his life here, referring to the issues

of language, education and friends, and stating that he had adapted to life in the UK. She said that the FtJ did not consider those matters.

As to whether the FtJ was right to say that the children could adapt, she said that it might be possible for others but F and his brothers had been here all their lives and all they knew was within the UK. It would be hard for them to leave and it would affect them mentally.

I asked the appellant how she responded to the respondent's contention that she and her husband could help the children re-integrate. She said that she had been in the UK since 2007. Therefore, how could the children adapt with parents who had left the country so long ago?

She added that as a family they are important together, being as one. It was good for the children to stay in the environment that they had known and grown up with all their lives. She asked that the matter be treated outside the Rules in terms of private life under Article 8.

She said that everything she wanted to say was in the letter dated 31 May 2009 from COIC. That letter repeats all the factors relied on by the appellant.

Assessment and Conclusions

The focus for the appeal before the FtJ was, in reality, the situation of F, who was 7 years and 11 months old at the date of the hearing.

The FtJ properly considered the appeal in terms of whether the appellant was able to meet any of the requirements of the Immigration Rules and rightly concluded that she could not. Indeed, it was expressly conceded before the FtJ that the appeal was advanced only on the basis of Article 8 outside the Rules.

It appears that the FtJ thought that in relation to the children, para 276ADE(1)(vi) needed to be considered in terms of very significant obstacles to integration. In fact, that paragraph of the Rules has no application to the children at least, given that it relates to applicants who are aged 18 years or over. In any event, the FtJ concluded that there would not be very significant obstacles to their integration, given that they would be returning with their parents who would be able to provide proper emotional and physical support. They speak English but that is widely spoken in Nigeria and they would be able to assimilate into the education system. The FtJ referred to there being nothing in their physical or mental health which presented any obstacle to their return. He concluded that they would easily adapt.

In that assessment, the FtJ took all relevant matters into account and came to conclusions that are entirely legally sustainable.

The FtJ was well aware of the length of time that the appellant had been in the UK, and more importantly F's age and how long he had been in the UK. The FtJ referred to all relevant factors in the assessment of whether it would be reasonable to expect him to leave the UK. However, the fact of the matter is that the *only* matter that told in favour of allowing the appellant's appeal was F's age, being 7 years and 11 months at the date of the hearing before the FtJ.

That made F a qualifying child, but being a qualifying child is self-evidently not a sufficient basis from which to conclude that an appeal under Article 8 must succeed. Under s.117B(6)(b) it would have to be established that not only was the child a qualifying child, but that it would not be reasonable to expect the child to leave the UK. Thus, length of residence alone is plainly insufficient.

In this case, nothing other than F's age and length of residence in the UK was put before the FtJ which could suggest that there was any particular factor indicating that it would be unreasonable to expect F to leave the UK. The FtJ plainly took everything into account. Before me, Mr Bramble quite rightly referred to the decision in *KO (Nigeria)*. At [19] of that decision, the Supreme Court said this:

> "There is nothing in the section [s.117B] to suggest that 'reasonableness' is to be considered otherwise than in the real world in which the children find themselves."

That 'real world' scenario in this case is that the children's parents have no leave to remain. In their own right therefore, the parents are required to leave the UK. As the FtJ properly reasoned, the children would return with their parents who would help them to integrate in all respects. The parents themselves would be able to re-integrate. They would live together as a family unit.

In my judgement, there is no basis for concluding that there is any error of law in the FtJ's decision in any respect. Indeed, the matters put before me do nothing other than reiterate the family's circumstances, and those of the children in particular. However, the FtJ gave full consideration to those circumstances. His conclusion that it would be reasonable to expect F to leave the UK is free from legal error, and thus so is the decision to dismiss the appeal.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal therefore stands.

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 her or any member of her 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.

Upper Tribunal Judge Kopieczek 08/08/19