IAC-BH-PMP-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/06199/2013
AA/06243/2013

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 17th February 2015

Determination Promulgated
On 30th March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

N N First Appellant
CUA Second Appellant
(ANONYMITY DIRECTION MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:
For the Appellants: Ms G Patel, of Counsel
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 24th October 2014 Judge of the First-tier Tribunal Wellesley-Cole gave permission to the appellants to appeal against the decision of Judge of the First-tier Tribunal T R P Hollingworth in which he dismissed the appeal on all grounds against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the first appellant and her minor son, the second appellant, who are both citizens of the Gambia.

2. Judge Wellesley-Cole considered it "just possible" that Judge Hollingworth had fallen into error because, in considering the Article 8 claim, he had wrongly referred to Section 174 of the Immigration Act 2014 which, it was assumed, should have been a reference to Section 117 of the "new 2014 Act". I have assumed that the latter reference by Judge Wellesley-Cole was intended to be to Section 117 of the Nationality, Immigration and Asylum Act 2002 as amended by the Immigration Act 2014. Although Judge Wellesley-Cole limited her comments to the judge's consideration of the Article 8 claim she indicated that all grounds could be argued.

3. At the hearing before me in the Upper Tribunal submissions were made by Ms Patel based upon the nine pages of grounds of application dated 13th October 2014 which I summarise, below.

4. The grounds take issue with the judge's findings of fact arguing that the evidence was not properly assessed in the light of expert opinion and was inadequately reasoned. It is also contended that the judge failed to deal properly with the Article 8 claim.

5. More specifically, the grounds pick out alleged errors in the determination to which there is objection. It is suggested that the judge wrongly determined the appeal by reference to an earlier decision of the First-tier Tribunal; raised for the first time an issue relating to the first appellant's birth certificate; failed to take into account that the appellant's claimed Mandinka ethnicity could be derived from her father even if her mother was Wolof; and failed to consider the expert evidence about FGM and ethnicity. It is also contended that the judge did not take into consideration the permanent right of residence granted to the appellant's partner when dealing with the Article 8 claim. Other, more detailed, issues are also raised in the grounds relating to the obtaining of a death certificate by a 12 year old niece, erroneous conclusions about the first appellant's father and an alleged use of the wrong standard of proof. It is also contended that the judge was wrong to comment on the appellant's use of her visa to remain in the United Kingdom before claiming asylum and also reached the wrong conclusion about the appellant's intention to convert to Christianity.

6. At the hearing Ms Patel expanded upon the grounds. As to the birth certificate issue she indicated that the Home Office had never asserted that this would show that the appellant was Mandinka. She also contended that the judge had failed to consider both expert reports in relation to FGM and the explanation given for that operation not taking place at an earlier age. She suggested that the judge's approach to the evidence was on the basis that the appellant could not be believed and was wrong to suggest that corroboration might be required. Whilst she argued that the errors in the asylum findings were of greatest importance, the reference to the wrong Section of the Immigration Act 2014 affected the Article 8 conclusions.

7. Mr McVeety submitted that the judge had clearly considered the expert reports and was entitled to find that the reports contradicted themselves. There was only one example given to support the contention (page 78 of the appellant's bundle) that FGM may take place later when Wolof women marry Mandinka men. The same report also appears to omit consideration of the fact that the first appellant's father was an Imam who, incredibly, had allowed his daughter to delay FGM when Paragraph 37 of the report makes it clear that the "initiation" is an ethnic and religious obligation.

8. Mr McVeety also submitted that the judge had applied the right standard of proof throughout the determination. He had not taken into consideration the earlier decision at all even though he reached conclusions which were consistent with it. Even though the birth certificate might not have shown evidence of the first appellant's ethnicity there were copious additional credibility points justifying the judge's conclusions. The judge was entitled to conclude that a 12 year old child could not obtain a birth certificate. Other findings of credibility were similarly open to the judge. He ventured to suggest that the claim that the first appellant's father had delayed FGM on cost grounds, despite being an Imam, was ridiculous.

9. As to the Article 8 issues, Mr McVeety pointed out that the judge had applied the reasonableness test correctly after considering the circumstances under the Immigration Rules. The mistake about the relevant statutory section was immaterial and may be simply a typographical error. The five stage tests in *Razgar* had been considered.

10. In conclusion, Ms Patel argued that the judge had failed to give comprehensive consideration to the expert reports and that they were not contradictory. The issue that might have been contained in the birth certificate should have been raised at the hearing rather than in the decision. As to the Article 8 conclusions, Section 117B of the 2002 Act might have assisted the Appellant if the judge had considered it. She also submitted that, as the claimed errors would lead to consideration of credibility, the matter should be remitted to the First-tier Tribunal for a fresh hearing.

Conclusions

11. I have little hesitation in concluding that most of the issues raised in the grounds amount to no more than a disagreement with the reasoned findings of the judge which he was entitled to reach on the evidence put before him. The judge's consideration of the two expert reports by Dr Knoerr and Dr Kea, respectively, is detailed covering two and a half pages of the decision under separate headings for each report. The judge's detailed analysis shows that he was clearly aware that the appellant was of mixed ethnicity parentage as paragraph 28 shows. The judge was entitled to disagree with the conclusions in Dr Kea's report about the reasons for delaying the circumcision ceremony for the first appellant when it was considered that her father is an Imam and therefore keenly aware of the importance of the ceremony in the community. The decision also points to inconsistencies in the appellant's evidence (paragraph 38) about this matter along with the claimed Mandinka ethnicity.

12. As to the birth certificate and death certificate issues, whilst it may be arguable that the birth certificate for the appellant might not show her ethnicity, that conclusion does not give rise to a material error against the background of the numerous other areas where the judge found the first appellant's claims to be inconsistent. Certainly, in relation to the death certificate, it was not unreasonable for the judge to find that a 12 year old relative could not have been capable of obtaining this document let alone sending it abroad on his own initiative.

13. As to the allegation that the judge did not consider the appellant's claims *"de novo"* the contention is wrong. Paragraph 31 of the decision is merely a comment that the judge was reaching the same conclusion as an earlier judge. There is no detailed

reference to the earlier decision and it is plain that the judge reached his own conclusions with reasons for finding that the first appellant was not a witness of truth.

14. Similarly, the allegation that the judge used the wrong standard of proof in relation to the issue of forced marriage is without foundation. Reference to the arrangement remaining "unproven" does not mean that the judge departed from the lower standard of proof mentioned within the decision. Further, there is no error in the judge concluding, for the reasons given, that the appellant had made a perfectly normal visitor application to come to the United Kingdom but never intending to return to Gambia.

15. As to the appellant's wish to convert from Islam to Catholicism, I am unable to see that the judge's conclusions in paragraph 123 are any more than a fair assessment of the position from the time it would take for such conversion to be achieved and to become a member of the Catholic faith.

16. In relation to the Article 8 claim the reference in paragraph 103 of the decision to Section 174 is clearly an error although not, I conclude, material. The judge's consideration of Article 8 issues follows the *Razgar* five stage tests taking into consideration that it had not been shown that the second appellant is a British citizen. The judge evidently considered the best interests of the second appellant and the first appellant's second child as a primary issue taking into consideration Section 55 of the Borders, Citizenship and Immigration Act 2009. No arguable material error is shown in this respect.

Notice of Decision

The decision of the First-tier Tribunal does not show a material error on a point of law and shall stand.

Anonymity

As this appeal involves the interests of children I repeat the anonymity direction given by the First-tier Tribunal as follows:

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 their 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 **30th March 2015**

Deputy Upper Tribunal Judge Garratt