



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/11634/2014

THE IMMIGRATION ACTS

**Heard at Columbus House, Determination Promulgated
Newport On 25th February 2015 On 11th March 2015**

Before

UPPER TRIBUNAL JUDGE POOLE

Between

**MISS FATOU NABANEH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K McCarthy, Counsel

For the Respondent: Mr Irwin Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a female citizen of Gambia, born 11 March 1982.
2. The appellant had sought further leave to remain by reference to Appendix FM to the Immigration Rules. That application was refused on 14th February 2014 and at the same time a decision was made to remove the appellant from the United Kingdom. It is noted that the appellant's child (YB) made an application to remain at the same time as the

appellant. That application was refused by the respondent at the same time as the decision in respect of the appellant. YB appealed to the First-Tier Tribunal, but a judge of the First-Tier Tribunal adjudged that the child had no valid appeal as the child had no extant leave at the time of the application.

3. The appellant appealed the respondent's decision and that appeal came before Judge of the First-Tier Tribunal Burnett sitting at Newport in September 2014. The appellant attended and gave evidence. Both parties were represented. During the course of the hearing the appellant's representative conceded that the appellant could not meet the requirements of the rules and the appeal proceeded upon the basis that the appellant contended that she was entitled to succeed on the appeal upon the basis of Article 8 ECHR.
4. In a determination promulgated on 6 October 2014, Judge Burnett dismissed the appellant's appeal on all grounds.
5. The appellant then sought leave to appeal that decision. Paragraph 6 of the grounds suggests that the reasoning of Judge Burnett were not "sufficiently robust" to justify reaching the conclusion that he did on Article 8 ECHR. It was submitted that another immigration judge might have arrived at a different conclusion!
6. There then followed five grounds seeking to challenge the decision of Judge Burnett. Ground 1 - alleged a material error in failing to give adequate reasons for not accepting that family life existed between YB and his grandmother. Ground 2 - there was misdirection on Article 8 Case Law, in particular with regard to **EV (Philippines)**. Ground 3 - indicated a decision based on speculation rather than evidence. Ground 4 - a failure to provide adequate reasons for the decision (by reference to paragraphs 59 and 62 of the determination) and finally Ground 5 - a failure to treat YB's best interests as a primary consideration.
7. This application came before Judge of the First-Tier Tribunal Grant-Hutchinson who granted leave to appeal, indicating that it was arguable that Judge Burnett had made perverse or irrational findings.
8. The respondent submitted a Rule 24 response arguing that the judge had directed himself appropriately and that he had carried out a careful assessment of all material issues, and had concluded that the appellant and her child could return to Gambia, and that such a finding was open to the judge.
9. Hence the matter came before me in the Upper Tribunal.
10. In her submission Ms McCarthy relied upon the grounds. Firstly the judge had failed to consider the depth of evidence relating to the relationship between YB and his grandmother, including the amount of time they

spent together. The grandmother had received child benefit in respect of the child that was indicative of the time the child spent with her. The findings of the judge were against the overwhelming evidence and his decisions were not reasoned.

11. As to Ground 2, the judge had misdirected himself with regard to **MF (Nigeria)**. That case was more akin to deportation cases than cases such as the appellants. His conclusions in paragraph 60 of the determination are flawed. Family life with the grandmother could and should continue. All the evidence is that the appellant came from a traditional family and she would be stigmatised because of the fact she had a child outside marriage. The judge was criticised for his comments in paragraph 56.
12. As to Ground 4, the judge needed to consider the best interests of the child and should have noted that the appellant was not an illegal entrant. The precarious nature of leave to remain should not apply to those with valid leave and that the judge had given insufficient weight to the evidence before him.
13. As to Ground 5, Ms McCarthy again referred to errors in the evaluation of the best interests of the child. The family in Gambia would not accept him. He is very young and could not maintain communications with his grandmother.
14. Ms Richards in his submission submitted that I should find no merit in the grounds. The judge had taken full account of all the evidence and had made clear findings with regard to grandmother's evidence (paragraph 24). He had clearly considered the grandmother's position at paragraph 46 and was obliged to take into account the effect of Section 117 of the 2002 Act. The judge had reached a rational conclusion.
15. The judge at paragraph 55 had considered the situation in Gambia and as to the best interests of the child the determination contains widespread consideration of those interests and Mr Richards referred me to paragraph 49.
16. In a final response Ms McCarthy referred me to paragraph 46 of the determination which understated the evidence. She agreed the determination did talk about the best interests of the child, but it is based more on speculation than on the evidence.
17. At the end of the hearing I indicated I was reserving my determination which I now give with reasons.
18. I find no material error of law contained within Judge Burnett's determination. As in all cases the determination has to be read as a whole and in doing so it is clear that the judge reached clear findings and

the determination contained explanation as to how those findings were reached.

19. It is firstly alleged that the judge did not give adequate consideration (anxious scrutiny) of the evidence. That is clearly not the case. The main thrust of the grounds seeking leave (and Ms McCarthy's submission) is that the judge disregarded the evidence of the grandmother. However paragraphs 24 to 28 set out a discussion on the evidence of the grandmother (and Mr Lamin). The judge details some of the evidence, but adds that the oral evidence was set out in the record of proceedings and had been taken into account by the judge. When he says that I have no reason whatsoever to doubt that he did take it into account.
20. The second ground alleges misdirection in respect of Article 8 Case Law. Again I disagree. Paragraphs 44, 57, 58, 59, 60 and 61 all set out the relevant case law. Whilst **MF (Nigeria)** did relate to deportation cases, this fact is set out in paragraph 60 by Judge Burnett and the final two sentences of that paragraph make his conclusions very clear. Despite having noted the concession that the appellant could not succeed under the Immigration Rules the judge did consider Article 8, but for the reasons given rejected the appellant's claim. Despite the "complete code" point there was consideration of the appellant's case, but she did not succeed.
21. As to Ground 3 alleging that the decision was based upon speculation rather than evidence, it is clear that the judge did not speculate, but came to conclusions based upon the evidence and in particular the evidence of the grandmother. These comments also apply to Ground 4 and given the judge's findings on other aspects of the case, it is hard to consider that the two jobs and tax paying position of the appellant could have had any different effect on the outcome of this case.
22. Finally with regard to the best interests of the child. It is quite clear from the determination that the judge properly directed himself with regard to that issue. Paragraph 49 sets out the general statement and Mr Richards is correct that when read as a whole the determination is dominated by consideration with regard to the child YB.
23. In short the judge properly directed himself with regard to the law by reference to the appropriate statute and to the relevant case law. He fully acted with the evidence that was before him and he reached clear conclusions with adequate explanation. The majority of the grounds are merely expressions of disagreement with the findings made.
24. As indicated above I find no material error of law and the appellant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Poole