**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA/23226/2014
IA/23584/2014
IA/23593/2014
IA/23587/2014

**THE IMMIGRATION ACTS**

| **Heard at: Field House** | **Determination Promulgated** |
|---|---|
| **On 3 December 2015** | **On 23 December 2015** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**MISS ANN CHIYIGA EGUEKE CHRISTOPHER**
**MASTER ATB**
**MASTER AB**
**MISS ATB**
(NO ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr N Klear of Counsel
For the Respondent: M S Kandola, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of Nigeria born on 29 February 1972, 20 May 2008 (the second and third appellant are twins) and 14 February 2011 respectively. They are a mother, her two sons and a daughter. First-tier Tribunal Judge Cooper dismissed the appellants appeals pursuant to Article 8 of the European Convention on Human Rights in a Determination dated 27 February 2015. Permission to appeal was

initially refused by First-tier Tribunal Judge Pirotta and subsequently granted by Upper Tribunal Judge Perkins stating that it is his concern that the First-tier Tribunal Judge should have shown more concern about the impact of removing the appellants when carrying out her Article 8 balancing exercise.

2. As the second, third and fourth appellant's appeal rests or falls with that of the first appellant, their mother, I shall consider the first appellant's appeal and for the sake of convenience refer to her as "the appellant". I shall specifically refer to the second, third and fourth appellant where necessary.

3. Thus the appeal came before me.

**First-tier Tribunal's Findings**

4. The respondent refused the appellant's application to remain in the United Kingdom outside the Immigration Rules on the bases of her and her children's private life in the United Kingdom.

5. The First-tier Tribunal dismissed the appellant's appeal, concluding that :

> [38] I found all the witnesses who appeared before me entirely genuine and credible. There is copious medical, educational and social work evidence to show that the boys suffer from autism to a high level. Whilst it is evident that they have the benefit of very substantial support from a number of specialists, I have no doubt that it is still a huge burden on the appellant to look after them every day, whilst also trying to give some attention to their younger sister. The appellant is no longer in a relationship with the children's father and apart from occasionally attending to help when the twins have to go to a hospital appointment, he seems to have effectively abdicated responsibility. There was no evidence of any attempt, for example, to obtain financial support from him.
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> [40] Turning to Article 8, I am satisfied that the respondent has correctly applied the Immigration Rules under appendix FM in paragraph 276 ADE, and that the conclusions she reached in the refusal letters are correct, i.e that the appellants cannot meet the requirements of those rules and neither did their representatives submit otherwise."
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> [41] "The issue is therefore raise whether removing the family to Nigeria, given the particular consequences for the treatment and ongoing support of the twins, and the effect on them of such a change of environment, would amount to an interference with their private or family life which is

disproportionate, even given the respondent's lawful and legitimate aim of maintaining effective immigration control."

[42] "the appellant's case centred largely on the lack of any, or adequate or affordable, provision of support in education in Nigeria for children with autism. The respondent cited from a number of background cases in support of their contention that such provision did exist, naming a number of specific organisations in Nigeria: autism Associates Nigeria, the or LG Health Foundation and Autism Centre (located in the Niger Delta), the Zamarr Institute, the Patrick Speech and Language Centre and the Autistic Healing School run by the Nigerian Autistic Society (see paragraph 29-30 in the 7 May 2014 refusal letter)."

[43] "in response to that the appellant called Miss Julia Wilkins as a witness. She adopted her letter of 12 May 2014 as part of her evidence. She confirmed that she was the branch officer of Haringey Branch of the National Autistic Society and the family support worker specialising in families that have autism at Mark Field, a centre in North London for families with disabled children. She had been running the Haringey branch of the Society for 15 years and had a 20-year-old son with autism."

[45] "in her letter and her oral evidence she asserted that there was no appropriate schooling for children like the twins in Nigeria and that they would be likely to face negative attitudes throughout their lives, as they would be regarded as "cursed". "Violence is often inflicted upon autistic children in Nigeria and Miss Christopher's fears for their well-being if she returns a well-founded". She said at her letter that she worked with Nigerian families with autistic children and that the stories of maltreatment of children with autism there were consistently shocking. She rejected the respondent's assertion that there was autism awareness in Nigeria and that therefore the children would not suffer. "As someone who works for the Nigerian specialist autism worker who is leaving work with the Nigerian government to set up a rudimentary very first step autism awareness system in the country, I can state with confidence that this is not so at all. There may well exist pockets of awareness in this large country but they absolutely have not extended to the main population. It is highly unlikely that the boys will have any access of any sort autism support within Nigeria".

[47] "extracts produced by the expert to the effect that there is very limited provision for autistic children in Nigeria, and that which does exist is very expensive. That is consistent with the contents of the section headed "challenges" in the article from the Nigerian Health Journal by Dr Frank- Briggs."

[48] "I however, even if this is the case, it is well established in case law that the lack, or indeed the cost, of medical and similar provision in the country to which a person will be removed, or the difference in standards between such provisions in the United Kingdom and in that country, will

not engage Article 8, save the most exceptional circumstances. This position was usefully summarised in **MM (Zimbabwe) v Secretary of State for the home Department [2012] EW CA C IV 279**."

[52] in the case of the appellants before me, I accept the evidence from the appellant that her two sisters are in the United Kingdom that they have a strong family bond and the sisters provide her with financial support (in addition to the substantial support provided by the local authority by way of housing, as well as the educational support following the twins being "statemented" as having special educational needs by the local authority)". I accept that the sisters here would not be able to provide the same level of emotional and practical support if the appellants were returned to Nigeria.

[53] "it emerged at the hearing that not only do the appellant's parents live in Nigeria, but that she also has two other sisters there, both of whom are married with children. The appellant and her sisters here assert that their parents are wholly unsympathetic towards the appellant and the twins. They say that they have told the appellant that she should beat the twins to make them speak" on their one visit to the United Kingdom a couple of years ago the parents did meet the children, but did not want anything to do with them.

[57] I accept from the background evidence produced by the appellant is that there is a degree of misunderstanding and societal prejudice in Nigeria towards those suffering from this condition, but against that I do set the evidence that there is some educational and social provision there. In the final paragraph of Mr Nwokolo's own paper, referred to a potential further development, namely an announcement by the Federal Ministry of Education in 2013 that it had set up a national education and assessment centre for autism in Abuja which would commence work in January 2014. The extract states that Mr Nwokolo has not seen or heard of the location and nor did he know of any child diagnosed who had been there, but this was an official government announcement, and he has not actually sent that it was not carried through. No evidence has been produced to indicate that the institutions referred to by the respondent in the refusal letter do not exist or operate now. His paper says that an estimated 190,000 children in Nigeria may be living with the condition, so it is clearly not unknown in that country.

[58]. Section 117B of the Act confirms that the maintenance of effective immigration control is in the public interest, and that it is also in the public interest that persons who seek to enter or remain in the United Kingdom are financially independent. Furthermore, little weight should be given to a private life of a person which was established when that person was in the United Kingdom unlawfully.

[59] the appellant's position is that she is not financially independent and that she has been in the United Kingdom unlawfully since the expiry of her

visit visa in 2003. Whilst I understand the emotional problems she encountered in an early relationship which turned out to be violent, she remained unlawfully for a further five years before conceiving and giving birth to the twins. The children's private lives have, of course, also all been established when they had no lawful entitlement to be in the United Kingdom.

[60] I recognise that it will indeed be very difficult for the appellant to return to Nigeria with her children. However, given the above considerations regarding their private life in the United Kingdom, and taking account of the respondent's lawful and legitimate aim of maintaining effective immigration control, I do not find that the interference with the right to enjoy private life is disproportionate.

[61] with regard to family life, there will be no interference as such with the rights of any of the individual appellants to enjoy family life within the immediate nuclear family since the appellant and her three children will be removed to Nigeria together as a family unit.

[62] it is a fact that the appellant's parents and two other sisters are in Nigeria. Whilst I accept that the appellant and her sisters in the United Kingdom have truthfully conveyed their current attitudes to the appellant and her twins, it is the case that the parents have only met them once, and the sisters have not met them at all. Her sisters here have explained how they each came to understand and sympathise with the appellant and her children, and I am not convinced that in due course such understanding and sympathy would not arise in the parents and siblings in Nigeria, once they have got to know the children better; no doubt the sisters here would actively seek to support the appellant in bringing that about, possibly assisting in relocating to Nigeria and "educating" the parents and siblings out of their traditional positions.

[63] in light of those findings, I am not satisfied that the removal of the appellants will in fact interfere with their right to respect for family life. If I am wrong in that conclusion, I am nevertheless satisfied that such interference would be proportionate to the pursuit of the respondent lawful and legitimate aim of maintaining effective immigration control.

## The grounds of appeal

6. The grounds of appeal state the following which I summarise. The first ground of appeal is that the Judge made an irrational finding based on the evidence. After finding that the appellants received financial and emotional support from the appellant sisters in the United Kingdom, found that there was no dependency such as to attract the protection of Article 8. The Judge did not record the extent of the appellant's emotional dependency on adult siblings in the United Kingdom who

provided her help and support on a regular basis and caring for her siblings.

7. The appellant had explained in evidence that caring for two severely autistic children of the same age, had meant that it had shut her out from the reality of life. She needed the break that her sisters allowed her for caring for the children. The Judge should have concluded, on her own findings, that the appellant, a single parent, did have a family life with the two siblings in the United Kingdom, who had provided her with invaluable assistance in the care of her children and much needed financial support. Having found the evidence to be entirely credible, there was simply no room for the Judge to conclude that "further elements of dependency, involving more than normal emotional ties," between the adults was not present. On an irrational perspective of the evidence the only conclusion that she could come to was that the appellant had family life with her siblings.

8. The second ground of appeal is that the Judge erred in law when she made an inspirational decision at paragraph 62 and stated that while she accepts that the appellant and as two sisters have truthfully conveyed their current attitudes to the appellant and her twins.... She is not convinced that in due course such understanding and sympathy would not arise in the parents and siblings in Nigeria, once they have got to know the children better"

9. The Judge recorded that autism is considered to be a curse in Nigeria. The appellant's sibling in her evidence in court said that her parents have a negative attitude towards the boys and it is evident that there is a massive challenge. Autism not something that is known back home as here in the United Kingdom there are other children that suffer from similar conditions and that there is that awareness and acceptance.

10. The Judge records in her determination that there is a degree of misunderstanding and societal prejudice in Nigeria and refers to Dr Frank Briggs report but at the same time fails to consider: "there is a high level of discrimination against children with "unseen" disabilities. Many schools and services are available for physically disabled children but very few facilities exist for autism and related behavioural and communication handicaps. The special schools reject autistic children. The Judge also failed to record other objective material, detailing that

autistic children are often branded as witches and targeted for appalling treatment.

**The hearing**

11. At the hearing I heard submissions from both parties as to whether there is an error of law in the determination of the First-tier Tribunal Judge. Mr Klear said that the appellant relies on three main grounds. The first is the assessment of the dependency on the appellant's sisters in this country. The support available to the appellant and the assessment of s55 in respect of the twins who are suffering from autism. He added that the Judge found that the sisters have a strong bond and that the appellant is a lone parent with three children. There were further elements of dependency as set out in the case of **Kugathas**. The Judge found that there would be difficulty for the appellant to look after her children. The Judge speculated when he said that the appellant's parents and siblings in Nigeria will accept the appellant's autistic twins. There was background evidence provided as to the societal prejudice about autism. The Judge did not consider the best interests of the children which was a statutory duty. Nor did he consider the impact on the children who suffer from autism and the change of country without the benefit of the local support that the twins have been getting in this school and how it will affect them. The children are blameless.

12. Mr Kandola on behalf of the respondent submitted it is not true to say that no other Judge would come to a different conclusion. The Judge did consider the family support that the appellant and her children receive in this country but it is not up to the level of good. The appellant came to this country in 2003 and overstayed. Disparity of care is not a reason to allow the children to remain. He submitted that the s55 ground is a rationality challenge and the children do not trump the public interest. The children have been living on the public purse and are not British citizens and therefore are not entitled. He cited the case of **EV Philippines** where it was stated that it is not the duty of the United Kingdom to educate everyone in the world.

**Discussion and Decision as to whether there is an error of law**

13. Therefore, the appeal involves two steps, the first being to determine whether there is an error of law in the determination of the first-tier Tribunal Judge and the second, if I find there was an error, to hear

evidence or submissions to enable me to remake the decision or send it back to the First-tier Tribunal for redetermination.

14. Having considered the determination as a whole, I find Judge's consideration of the appellant's appeal in respect of Article 8 of the European Convention on Human Rights is not materially flawed. The Judge considered Lord Bingham's step by step approach in the case of **Razgar, R (on the Application of) v SSHD [2004] UKHL 27** and in so doing recognised that at all stages of the Article 8 assessment when deciding whether there is a family or private life, when deciding whether any existing family or private life is the subject of an interference having grave consequences and when deciding whether any such interference is proportionate to the legitimate public end sought to be achieved, the approach is to take into account a wide range of circumstances including the appellants previous family and personal circumstances and the likely developments in the future.

15. There was no dispute that the appellant does not meet the requirements of the Immigration Rules. The appellant's application was made pursuant to Article 8 of the European convention on Human Rights in respect of her and her two three children's private life in the United Kingdom. The evidence is that the appellants twin sons suffer from autism and are receiving a lot of support from social services in this country. The appellant claims that Article 8 is engaged because they will not receive the same support in Nigeria. It was also argued that societal attitudes to autism in Nigeria are appalling and people with autism are treated badly and these circumstances are sufficient for the appellant to receive the protection of Article 8 and preclude the respondent from removing the appellant from this country.

16. It is not in dispute that the appellant has lived in this country unlawfully since her visit visa expired in 2003. The Judge therefore found that the appellant, had her children have lived in this country unlawfully for a very long time and this informed her decision. The Judge cannot be criticised in that she did not understand the appellant circumstances completely. It is evident from the determination, she took into account all the evidence provided by the appellant, relating to the twins medical, educational and social work evidence. She accepted the evidence that the twins do suffer from autism to a high level. The Judge in a very careful determination set out all the evidence and applied the established jurisprudence to the facts of this appeal in her determination.

17. The Judge considered the background evidence on autism in Nigeria to satisfy herself that medical and social provisions exist in Nigeria for children suffering from autism. She found that there are a lot of organisations which provide care for autism in Nigeria and named the main ones in her determination. The Judge took into account at paragraph 42 that there are organisations in Nigeria who cater for children with autism.

18. Having found the above, she into account the case of **MM (Zimbabwe)** in which it was stated that availability of medical treatment in the United Kingdom within the country to which it is proposed to deport an applicant under Article 3 and Article 8 of the European Convention on Human Rights establishes that even where a claimant is suffering from mortal illness such as advanced HIV/AIDS and, if deported, would deteriorate rapidly and suffer from an early death, no breach of Article 3 is established. She further relied on the guidance in the case that the essential principle is that the European Court of Human Rights does not impose an obligation on the contracting States to provide those liable to deportation with medical treatment lacking in their "home countries". This principle applies even where the consequences will be that the deportee's life will be significantly shortened. The case stated that the principle was expressed in those cases in relation to Article 3, it is a principle which must apply to Article 8. The court stated that it makes no sense to refuse to recognise a "medical care" obligation in relation to Article 3 but to acknowledge it in relation to Article 8. In **N v UK** the European Court of Human Rights took the view that no separate issue under Article 8 arose.

19. The Judge also took into account the negative societal attitudes towards autism in Nigeria. She took into account the appellant's and her sister's evidence that in Nigeria the appellant parents and sisters blame the twins condition on the appellant's lack of parenting skills. The Judge considered the appellant's evidence that her relationship with her parents and sisters in Nigeria has deteriorated since the twins were diagnosed as autistic. She stated in the determination that when one of the sisters was asked during her evidence whether living with the children might change her parent's attitude, she replied "I honestly don't think it's going to change their attitude. When you do see the boys it is very evident that you've got a massive challenge. This is not something that is known back home. Here in the UK there are other

children that suffer from similar conditions, and there is that awareness and acceptance".

20. The Judge accepted that there is a degree of misunderstanding and societal prejudice in Nigeria towards those suffering from this condition but stated that there are some educational and social provisions in Nigeria although they may not be up to the standard of the United Kingdom. She also referred to the evidence in the final paragraph of Mr Nowokolos own paper preferring to a potential for the development, namely an announcement by the Federal Ministry of Education in 2013 that it had set up a National Education and Assessment Centre for Autism in Abuja which would commence work in January 2014. The Judge found this was an official government announcement and there was no evidence that the program has not been carried through. She also found that there was no evidence provided to indicate that the institutions referred to by the respondent in her refusal letter did not exist or operate at the current time. She also noted Dr Frank Briggs paper stating that an estimate of under 190,000 children in Nigeria may be living with the condition, and found the condition autism is clearly not unknown in that country. The Judge therefore did her due diligence and found that there is help for autistic children in Nigeria.

21. The Judge was entitled to take into account that the appellant and her children who are not British citizens and are not entitled to rely on the public purse and receive the special treatment and care on social services of this country. The Judge found that the medical condition in itself does not entitle them to continue to receive British and special-needs education for the rest of their lives in this country. These are sustainable findings and there is nothing unreasonable or perverse about them and are in line with the case of **EV Philippines** which was referred to by the Judge at paragraph 28 of her determination that none of the appellant's family were British citizens. It is clearly stated in **EV Philippines** that if the parents are removed, then it is entirely reasonable to expect the children to go with them. Because the best interests of children are to remain with their parents. In **EV Philippines states** "although it is of course a question of fact for the Tribunal, I cannot see the desirability of being educated at the public expense in the UK can outweigh the benefits to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world".

22. The Judge considered the evidence within the prism of the best interests of the children and societal attitudes to autism in Nigeria as it might impact on the children. The Judge did not find that these were exceptional circumstances where the appellant should succeed under Article 8 when they are not able to succeed under the Immigration Rules. These are sustainable findings.

23. The other complaint made about the determination is that there was sufficient evidence before the Judge to find that appellant's relationship with her sisters in this country does engage Article 8. The Judge accepted the evidence from the appellant and her two sisters that they have a "strong family bond" and that the sisters provide her with financial and emotional support in this country. The Judge was entitled to find that the family bond did not amount to a relationship over and above that expected between siblings.

24. The Judge noted in her determination that "it emerged" during the hearing that not only do the appellant's parents live in Nigeria but she also has two other sisters both of whom are married with children. This shows that this important piece of information was not disclosed earlier and no reason has been given in the determination for why it had to emerge during the hearing and it was not disclosed earlier. This clearly indicated to the Judge that the appellant had two sisters living in Nigeria who could offer her support notwithstanding their lack of understanding about autism.

25. The Judge found that there is awareness in Nigeria about autism and the parents and sister's attitude to the twins might change once they engage with each other and got to know the children better. The Judge also said that the sisters in this country would actively seek to support the appellant in bringing that about and to assist her in relocating to Nigeria and educating the parents and siblings out of their traditional positions. The complaint is that the Judge speculated that the appellant's parents and sisters would eventually come around to accepting the appellant's twins with their condition. Even if that was speculation, it is not a material error in the circumstances of this appeal.

26. The Judge obviously did not accept that merely because the appellant does not have parents and siblings to support her on her return, should in itself be a reason for the whole family to continue to live in this country given that they have been living here lawfully and have been a

burden on the public purse. The Judge took into account the public interest as she was duty-bound to do, and found that the appellant's circumstances do not trump those of the respondent.

27. The Judge obviously did not find the appellant circumstances to be exceptional circumstances or that they fit into the gap where the Immigration Rules end and the European Convention on human rights start.

28. On the evidence in this appeal, I find that a differently constituted Tribunal would not decide this case differently and the decision is in accordance with the established jurisprudence.

29. I therefore find that there is no material error of law in the determination and I uphold it.

**DECISION**

The appellants' appeals are dismissed

Signed by

Mrs S Chana
A Deputy Judge of the Upper Tribunal Dated this 15th day of December 2015