Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/46495/2014
IA/46504/2014
IA/46517/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Decision and Reasons Promulgated**
On 20 May 2015	**On 27 May 2015**

Before

Deputy Upper Tribunal Judge Pickup

Between

Olimata Ba
Adji Fatou
Mamy Yaga
[No anonymity direction made]

Appellants

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellants: Mr C Harris, instructed by Binas Solicitors
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the appellants' linked appeals against the decision of First-tier Tribunal Judge Lloyd-Smith promulgated 2.2.15, dismissing their appeals against the decisions of the respondent to refuse their applications for leave to remain in the UK on the basis of

family life, and to remove them from the UK as illegal entrants pursuant to section 10 of the Immigration and Asylum Act 1999. The Judge heard the appeal on 27.1.15.

2. First-tier Tribunal Judge Cox granted permission to appeal on 7.4.15.

3. Thus the matter came before me on 20.5.15 as an appeal in the Upper Tribunal.

Error of Law

4. At the appeal hearing before me I found no material error of law in the making of the decision of the First-tier Tribunal as to require the decision of Judge Lloyd-Smith should be set aside. I reserved my reasons, which I now give.

5. In summary, the three grounds of appeal are that (1) the judge applied the wrong 276ADE test; (2), which is really the same ground, that the judge failed to take material matters into account, which would have demonstrated very significant obstacles; and (3) that the judge erred in the article 8 assessment, requiring compelling circumstances, in error failing to consider that the family could not return together because the spouse could not establish his Senegalese nationality; and ignoring the circumstances the appellants would face in Senegal, even though not amounting to a valid asylum claim.

6. For the reasons set out below, whilst there were some errors, I find them not material to the outcome of the appeal. When looked at as a whole, on the facts of this case in the round, the conclusions of the judge that the appellants neither met the requirements of the Rules nor was their removal disproportionate were entirely sustainable with cogent reasons, rational and cannot be described as perverse. I am not satisfied that such matters urged on me by Mr Harris as are relevant or material would or could have made any difference to the outcome of the appeals, they would still have been dismissed. I find that much of the grounds of appeal amount to no more than a disagreement with the findings of the judge, for which cogent reasoning has been provided.

7. I accept that Judge Lloyd-Smith erred in applying the old version of paragraph 276ADE. In granting permission to appeal, Judge Cox noted that the judge applied the old 'lost ties' test rather the 'very significant obstacles' test under paragraph 276ADE, causing Judge Cox to be "just persuaded that the error was arguably material, given the principal A's past difficulties. If they had been factored into the 276ADE analysis, the result might arguably have been different."

8. The Rule 24 response, dated 13.4.15, accepts that the judge applied an outdated version of paragraph 276ADE, but it is submitted that on the material findings of fact it is clear that there would be no very significant obstacles to integration into Senegal. I agree with that submission. I find that the appellants have failed to demonstrate that application of the very significant obstacles test would have resulted in the appeals being allowed under 276ADE. Whilst there may be some challenges or difficulties in returning, nothing in the matters urged upon me could amount to very significant difficulties, such that the failure of the judge to apply that test would or

could have produced a different outcome. In particular, the appellants are all Senegalese and associated with the Senegalese community in the UK; it is clear that cultural links have been retained. The judge also rejected the claim that they had no family support in Senegal. The findings at §20 remain relevant and material to 'very significant obstacles': that the main appellant has not been absent form Senegal for such a period as to lose all ties there with family and friends, where she was educated and would, in the judge's view, be in a position to re-establish herself and obtain employment. Once the asylum issues, not relied on at the First-tier Tribunal, are taken out of the equation, there was no real reason why the appellants could not and should not return to Senegal. None of the appellants are British and the children have no entitlement to education or other benefits of the UK. Their best interests are undoubtedly to remain with their parents.

9. I was not impressed with the argument that the spouse would be unable to return to Senegal because he allegedly had no means to establish his Sengalese nationality. He has no status and no right to remain in the UK. He was raised and educated in Senegal and the bare assertion that the authorities would not recognise him as Senegalese does not demonstrate that he would not be able to return, either to Senegal or some other third country where they could enjoy family life.

10. In granting permission to appeal Judge Cox noted that ground 3, criticising the article 8 proportionality assessment was "weaker" but found that the some of the points made, such as whether the judge required there to be compelling circumstances, were immaterial because the First-tier Tribunal Judge went on in any event to make a full article 8 ECHR proportionality assessment.

11. I note, from §19 of the decision that the judge considered the objective material relied on by the appellants as to the dangers young girls may face in Senegal, but it was accepted at the First-tier Tribunal appeal hearing that these matters would not amount to a valid asylum claim as a well-founded fear of persecution or mistreatment. The judge was, in effect, asked not to take that issue into account. In raising them in the appeal to the Upper Tribunal, Mr Harris is in effect asking the Tribunal to use article 8 as a back-door asylum route, even though they would not meet the lower standard of proof of a well-founded fear of persecution or represent a real likelihood of a risk of serious harm.

12. I also note that the judge failed to consider section 117B of the 2002 Act as part of the article 8 assessment. In respect of this issue Mr Harris was silent, but I find that it would not only not have assisted the appellants, but in fact highlighted in the article 8 proportionality assessment the strength of the public interest in their removal, particularly in the light of the recent decision of AM (s117B) Malawi [2015] UKUT 0260 (IAC), where it was held that an appellant can gain no positive right to a grant of leave to remain from section 117B(2) or (3) regarding English language fluency or strength of financial resources. Further, under section 117B little weight should be accorded to any private life developed in the UK whilst a person's immigration status is precarious, which is defined for even a person with leave as being contingent on obtaining further grant of leave to remain. As the judge noted at §5 of

the decision, the principal appellant came to the UK as a family visitor in 2003, but since the expiry of her 6 months leave has remained in the UK illegally and making no attempt to regularise her immigration status for over 10 years. During this time she embarked on a relationship with another Senegalese national with no legal status in the UK and went through an Islamic form of marriage in 2007, and proceeded to have two children, 6 and 3 years of age at the date of the First-tier Tribunal hearing. The appellant and her partner could have had no legitimate expectation of being able to remain in the UK at all; their situation was precarious and unlawful. Neither they nor their children have any legitimate claim to continuing private or family life in the UK. By reason of section 117B little weight should be given to a relationship with a partner in any proportionality balancing exercise when considering the public interest in the removal of the appellants. For these reasons, I find that notwithstanding the matters urged on me by Mr Harris in respect of the article 8 assessment, on the facts of this case, the inevitable outcome of the proportionality assessment was and would continue to be that removal was proportionate. To that extent, there is no material error in the article 8 assessment. This was a very weak claim for leave to remain on grounds of private or family life and I am satisfied that it was one with no prospect of success, regardless of the matters urged on me by Mr Harris.

Conclusions:

13. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeals of each appellant remain dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

I make no fee award.

Reasons: The appeals have been dismissed and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup