IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/10288/2015
IA/10293/2015
IA/10304/2015

THE IMMIGRATION ACTS

Heard at Field House, Bream's Buildings	**Decision & Reasons Promulgated**
On 21st March 2016	**On 25th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) [MARY O A]
(2) [A F]
(3) [K O]
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr Wale Adelakun (Solicitor)
For the Respondent: Ms Brocklesby-Weller, (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge D A Pears, promulgated on 16th September 2015, following a hearing at Richmond Magistrates' Court, on 27th August 2015. In the determination, the judge dismissed the appeals of [Mary OA], [AF], and [KO]. The Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are citizens of Nigeria. They comprise a family of a mother and her two children. The first Appellant, the mother, was born on 21st November 1980. The second Appellant, her daughter, was born on [ ] 2000 and is 14 years of age. The third Appellant, the first Appellant's son, was born on [ ] 2009 and is 5 years of age. They appeal against the decision of the Respondent dated 2nd March 2015, rejecting their claim for further leave to remain in the UK on the basis of Article 8 of the ECHR and Section 55 of the BCIA 2009.

The Appellants' Claim

3. The first Appellant's claim is that she cannot now return back to Nigeria because of fear of domestic violence from the father of the second Appellant, and that given the length of time that the Appellants have been in the UK it would not be reasonable to expect them to do so in any event.

The Judge's Findings

4. The judge had regard to the fact that the refusal letter expressly refers to Section 55 of the BCIA and the best interests of the children (see paragraph 7), observing (at page 5) that, "your client's children are not British nor settled in the UK" before dealing with the reasons for why there would not be very significant obstacles to their return back to Nigeria. The refusal letter observes that the children cannot remain in the UK by virtue of the child route because the mother's application has not been allowed (see paragraph 8). Specific regard is given to Section 55 of the BCIA (paragraph 10).

5. The judge has regard to the established case law in this jurisdiction (see paragraphs 11 to 18). He then goes on to consider the evidence thereafter.

6. The judge's conclusions are that the first Appellant seems to have had no leave since 2007 and has tried different routes to remain in this country even though her position has been precarious for many years. The judge ruled that even if he was to accept the authenticity of documents said to relate to the assault in Nigeria, he would have to conclude that there is no risk to the Appellants from the first Appellant's first husband because there has been no contact with him for over a decade. The first Appellant could not make out a case for not returning to Nigeria based on historic domestic violence. There were no very significant obstacles to her reintegration into Nigeria. As far as the children were concerned the judge took into account their age, how long they had been in education, what stage their education reached, and to what extent they had been distanced from their country. The judge noted that the second Appellant is engaged in a GCSE course but equally the third Appellant has only just started school. They did not speak Yoruba, "but equally they will be returning to a country of their citizenship, where their mother was brought

up and their grandmother still lives" (paragraph 37). The judge went on to hold that it had not been shown on a balance of probabilities that the Appellants could remain here on the basis of Appendix FM, EX.1 or paragraph 276ADE. The Respondent had also discharged his duties under Section 55 of the BCIA. There were no exceptional circumstances put forward (see paragraph 40). The appeal could not succeed under Article 8.

7. The appeals were dismissed.

Grounds of Application

8. The grounds of application state that the judge had not considered the best interests of the minor Appellants. He had not carried out his own assessment of his findings. He had simply referred to the way in which the Secretary of State had come to her own conclusions on the issues before her.

9. On 5th February 2016, permission to appeal was granted.

10. On 24th February 2016, a Rule 24 response was entered to the effect that the judge was fully aware that he had to consider the best interests of the children as a primary consideration and gave the correct self-direction to himself (at paragraphs 7, 10, 12 to 16). The judge was right in saying (at paragraph 37) that the Appellants "would be returning to their country of citizenship, where their mother was brought up, and their grandmother still lives ...".

Submissions

11. At the hearing before me on 21st March 2016, the Appellants were represented by Mr Wale Adelakun, a solicitor, and he referred to his skeleton argument and the Grounds of Appeal. The high point of his submissions before me were that the second Appellant had now been in the UK for seven years and was 15 at the time of the application. The third Appellant had been here for six years at the time of the application. Paragraph 276ADE and paragraph FM was applied but Section 117B of the 2002 Act was not properly applied at all. Moreover, Article 8 was not properly considered in any event. The judge was also wrong in concluding that the first Appellant could return on the basis that there was no continuing risk of domestic violence, any such threat being of historic significance only, but the judge does not refer to any police report or any expert objective evidence to come to this conclusion. Mr Wale Adelakun submitted that the judge does not refer to **SS (Congo) [2015] EWCA Civ 387** at all. He does not look at the situation outside the Immigration Rules at all. The fact is that the children have no cultural affinity with anyone in Nigeria. The father of the second Appellant has no parental responsibility for the child. The best interests of the children were not served by accompanying their mother to Nigeria.

12. For her part, Ms Brocklesby-Weller relied upon on the Rule 24 response. She submitted that the "domestic violence" area has not been granted permission by the judge. The only issue is that of assessment. All the relevant case law, however, was here cited by the judge in the determination. This is clear from paragraph 11 onwards. The best interests of the children have to be with their mother. It is not the case that the judge does not embark upon a judicial assessment of the issues himself. This is clear from paragraph 37 of the determination where the judge sets out the various factors from (a) to (e) and then goes on to explain what he has regard to, observing that although the second Appellant has engaged on a GCSE course, the third Appellant has only just started school, and he is aware that none of them speak Yoruba, but that they would equally be returning to the country of their citizenship. He goes on to say that, "I have to weigh up the fact that they will all be returning as a family unit and the poor immigration history of their mother". Accordingly, the assessment had been undertaken and any criticism in this regard was unfounded. As far as Section 55 was concerned, the judge held that the Respondent had discharged this duty and the judge gave clear and reasonable findings for this.

No Error of Law

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. This was a case where the judge does have proper regard to the material facts and the relevant law. The suggestion that the case of **SS (Congo) [2015] EWCA Civ 387** has not been applied is misconceived because that makes it clear that there must be something "compelling" about a claim for it to succeed on Article 8 grounds outside the Immigration Rules, and in this case the judge has explained (at paragraph 37) why this is not the case. It is true that the eldest child, the second Appellant, is now embarking upon GCSE exams and has been here for over seven years and this does bring into play the considerations in **Azimi-Moayed [2013] UKUT 00197**, but the essential issue is how the "best interests" of the children are to be served and the judge has here considered this issue. It needs to be borne in mind, moreover, that in **Zoumbas [2013] UKSC 74** it was affirmed that, where children have no independent lives of their own, their best interests are served by being with the parent who has parental responsibility, and this is the case here as well. The Appellant cannot point to any exceptional circumstances that would lead to a different result. It is true that they do not speak the Yoruba language but the judge has taken this into account and has reached conclusions that were open to him.

Notice of Decision

14. There is no material error of law in the original judge's determination. The determination shall stand.

15. No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 21st April 2016