Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-000949
HU/20184/2019

THE IMMIGRATION ACTS

Heard at Field House
On 16 September 2022
Extempore

Decision & Reasons Promulgated
On 17 November 2022

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS ADEOLA ADUNNI KUDIRAT OLADAPO
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Ms A Nolan, Home Office Presenting Officer
For the Respondent: Ms K McCarthy, Counsel instructed by Duncan Lewis Solicitors

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Cameron allowing the appellant's appeal against a decision of the Secretary of State to deport her from the United Kingdom. Although this is the Secretary of State's appeal, I refer to Ms Oladapo as the appellant, as was before the First-tier Tribunal, merely for reasons of convenience.

2. The appellant has two children who were born in the United Kingdom and have British citizenship. She is separated from their father. The factual background to the conviction and the family is set out in the decision and there is no point in rehearsing that here.

3. The thrust of the Secretary of State's case is that the judge erred in concluding that there was no longer contact or an effective relationship between the appellant's children and their father.

4. The judge accepted that the appellant had been convicted of dishonesty but found her evidence credible and consistent. He considered also the evidence of the social work reports prepared in 2016 and 2020 which addressed contact with the father, considered evidence submitted by the Secretary of State relating to the father's 2019 application for leave to remain in the United Kingdom which was granted on human rights grounds but noted that the documents supplied in support of that did not in fact mention the children. The judge also referred to references from people who know the appellant, all of which refer to her being a sole parent.

5. The judge concluded first that it would be unduly harsh to expect the children to go to live in Nigeria. He also considered that it would be unduly harsh to expect the children to remain in the United Kingdom and be separated from their mother.

6. The Secretary of State sought permission to account on effectively three bases. First, there were insufficient reasons for accepting that the appellant's two children lost contact with their father after 2010 and that in reality therefore he was not in a position to look after the children; second, in not addressing whether it would be unduly harsh for the children to remain in the United Kingdom without their mother; and, failing adequately to reason why it would be unduly harsh either to go with Ms Oladapo to Nigeria or to remain in the United Kingdom with her. Permission was granted by Judge Pickup on 17 May 2022.

7. As Ms Nolan for the Secretary of State accepts, the central challenge is to the finding that the appellant's children have no contact with their father. The Secretary of State seeks to impugn that but it is accepted that there is no challenge to the finding that it would be unduly harsh to expect the children to go to live in Nigeria with their mother and there is an acceptance that in effect, if it is shown that the appellant's children have no contact with their father and he is not in a position to care for them, that it would be difficult to demonstrate that it is unduly harsh for the children to remain in the United Kingdom.

8. I consider that the judge dealt adequately with the evidence produced by the Secretary of State. That is in the form of the application form and supporting documents produced by the father in support of his application for leave to remain in the United Kingdom.

9. It is relevant to consider that application as a whole. The application was supported by, as is customary, a letter from his solicitors. That makes it clear that the basis of the application is on the basis that he is over 25 years of age and has continuously spent in excess of twenty years living in the United Kingdom. It is not in the covering letter suggested that it is on the basis of his relationship with his children.

10. Equally, it is of note that although there are various boxes ticked in the application form to the effect evidence of contact between him and the children d, and evidence from the children's mother (the appellant) would be provide that does not appear in the evidence produced by the Home Office. In effect, the father was at the points when asked said that he will provide evidence of contact with the children, not that it is included with the application and he also says at points that he will provide evidence that he has a relationship with the children but if that evidence was provided, it was not put before the First-tier Tribunal, nor was it put before me.

11. It is instructive that the appellant's estranged husband states in one part of the application form that "I am not applying as a family member - I am only applying on the basis of private life in the United Kingdom". In the light of that and in light of the sustainable credibility findings reached by the judge, and the absence of any substantial evidence suggesting continued contact or a relationship that had been attached to the application, the judge's reasoning with respect to preferring the evidence of the appellant and the other witnesses is adequate and sustainable.

12. It might have been better if the judge had not written at paragraph [56] that there was "no evidence" but that has to be understood in the context of the evidence to which I have already referred. He was correct, however, to say that the statements that the children's father relied upon do not in fact mention the children. The evidence of contact with the children is, as I have already said, limited at best and in that context and in the context of the other sustainable and properly reasoned findings reached by the judge, I consider that the finding that the children live with their mother and that their father has had little or no role in their life since 2010, now twelve years ago, is sustained and is neither irrational or perverse.

13. In the light of that, it cannot be said that any defects with regard to the judge's analysis of unduly harsh in respect of the children remaining in the United Kingdom apart from their mother is material. I observe in passing that the respondent's own policy makes it clear that it would be in general unduly harsh to expect children to remain in the United Kingdom where there is no parent to care for them. If there is no parent, then absent relatives to look after them, they may well end up in local authority care. In any event, the judge's reasoning on the unduly harsh point, given the sustainable finding about the lack of the father's presence in their lives, is sustainable.

14. Accordingly, it cannot be argued that the analysis of undue harshness involved the making of any error affecting the outcome.

15. For these reasons, I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed Date 05/10/2022

Jeremy K H Rintoul

Upper Tribunal Judge Rintoul