



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/19453/2012

THE IMMIGRATION ACTS

Heard at Field House
On 8 August 2013

Determination Promulgated
On 24 September 2013

before

UPPER TRIBUNAL JUDGE ALLEN

Between

EBELE CYNTHIA OKAFOR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Pipi (acting pro bono)
For the Respondent: Ms H Horsley, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the re-hearing of the appellant's appeal against the Secretary of State's decision of 20 August 2012 to remove her as an illegal entrant. At an earlier hearing on 21 January 2013 I found material errors of law in the earlier determination of the First-tier judge, such that the matter required to be re-heard.

2. Mr Pipi had thought that the appellant was still represented by A Vincent Solicitors, but a letter received from them dated 6 August 2013 said that they were no longer on the record as instructed and/or acting for the appellant. In the circumstances Mr Pipi proposed to act for the appellant pro bono. I am extremely grateful to him for acting in this way and had derived considerable assistance from his skeleton argument and submissions.
3. The appeal had had to be adjourned on 31 May 2013 because there was a court order from the family court which the Home Office wished to consider and also a question of whether the forthcoming determination of the Tribunal in the case of **JF** would be of significance. Mr Pipi was in favour of proceeding today. He was not going to be in a position to act pro bono on a future occasion and it was unclear how relevant **JF** was to the case and it would be open to the Tribunal to decide what to make of the law as it stood at present. He asked me to proceed today and Ms Horsley had no objection to that.
4. The appellant identified her signature on her statement of 8 August 2013 and said that it was truthful and that it should form part of her evidence today.
5. With regard to her sister Vivian, she cooked for her of necessity because her sister had fallen asleep once when cooking. The court order had been made because Vivian had been insisting that she was all right and could look after her daughter Louise so sometimes when the appellant was cooking her sister liked to go out with her daughter when the appellant did not know and the authorities had said that her sister was not all right. She visited her sister four or five times a week and while there she cooked for her and made sure that everything was all right.
6. As regards the "joint carer responsibilities" referred to at paragraph 4 of her statement, she said that she looked after her sister and stayed with her and she brought Louise to stay with her (i.e. the witness) at the weekends. She was asked why Vivian's husband Moses could not do that and she said it was as he was always away and he and Ms Wilson, Louise's special guardian, did not get on well.
7. When cross-examined by Ms Horsley the appellant said that she lived with her brother-in-law, Moses Akudu, having moved in there last April. This had been because they wanted to evict her sister. The Home Office had said that the appellant should move to the address with her brother-in-law and his two sons. She had been living with her sister before that and her sister now lived in Edmonton, in a double room. She was asked whether there was any evidence from her sister about the witness coming to the United Kingdom and staying here and contact between her and Vivian and the children and she said no, she thought the evidence from CAFCASS was about the witness living with her sister Vivian and helping her. She was asked why her sister had not written a letter and she said it was as she was not well. Her sister worked as a care assistant and she agreed that she was not so ill that she could not work. She was asked why, if her sister could work full-time could she not write a letter and she said her sister would appear to be normal but then changed

and sometimes when you asked her to do something she said she could not. Her sister supported her being here in the United Kingdom and looking after the children. She lived with her sister at Wightman Road since she had first come to the United Kingdom. She had not lived anywhere else.

8. She was referred to an address at Maltby Drive, Enfield, referred to in Dr Haas's letter of 6 October 2011, and said that she used to visit there and her brother-in-law Moses had been living there at the time. She had put his address down as he was her sponsor. Moses was in Nigeria today, having gone last month and had said he would be back some time next month. While he was away she cared for his children. He travelled to Nigeria a lot having previously been between last December and April. He did business there. She denied the real reason she was here was to look after his children and let him do his business. She said she was here to look after her nephews and niece as her sister was unwell.
9. Her sister had been made homeless in June 2013, from Whiteman Road. She agreed that she herself had moved out in April 2012 and this was because the Home Office had instructed her to stay at the address that she had stated in the letters. She was asked whether if her sister needed her help to look after her could she not have asked the Home Office to let her live with her at Whiteman Road and she said she had not known she could. She did not have the Home Office letter saying she must stay with the sponsor with her today.
10. She had come to the United Kingdom on a visit visa with the support of Social Services. This had been when Louise was 4 and the local authority had supported the application. It was true that in his letter Mr Dowell had not said that she had to come to the United Kingdom.
11. The appellant was asked on what day her sister had contact with Louise and said that it was sometimes Mondays and it depended on what she wanted and it could be Thursdays. She had to call in advance to make arrangements. The contact took place at Ms Wilson's house. The contact was arranged by her sister Ms Wilson. Louise saw her father on Sundays every two weeks at their house. She was asked whether, when as now her father was away, did Louise see her brothers on Sundays and she said that she saw them every weekend between Saturday and Monday. They did not have a different contact arrangement. It was put to her that this seemed to conflict with the terms of the court order and the appellant said that she brought Louise every Saturday to Monday. Her sister had wanted to do that herself but the court had ordered that the appellant should do the contact. Her sister had wanted to collect Louise herself. She had last seen Louise last Sunday, having collected her from Ms Wilson's between Saturday and Monday. She agreed that this was a different arrangement with Ms Wilson from the terms of the court order. Ms Wilson was not here today to support her application.
12. With regard to what she said at paragraph 16 of her statement about the difficulties she would experience on return to Nigeria she said she would not be able to get a job

there. It was difficult to get a job there and she had had a job before she came here but would not be able to get a job at all on return. She had her mother in Nigeria but no uncles or aunts. She had cousins but they lived in the USA.

13. There was no re-examination.
14. In her submissions Ms Horsley relied on the refusal letter. She accepted that there was family life with the children but argued that this had been established when the appellant had no immigration status in the United Kingdom. She was living with the two elder children, as her brother-in-law travelled a lot, and it was argued that this was done to provide childcare for them. He could provide that care himself or employ someone with status to do it.
15. The appellant had been in the United Kingdom since January 2010 and had been living with her brother-in-law and his two sons since April 2012. Previously she had lived with her sister. The best interests of Louise were to remain in the United Kingdom with her special guardian who had an order to look after her. The appellant had never lived with the child and was not her primary carer. The Tribunal was referred to the CAFCASS Report concerning Louise's best interests. Ms Wilson had a special guardianship order in respect of Louise which included contact with the birth family. This was supervised by the appellant. She had provided mediation between Ms Wilson and her brother-in-law. It was quite clear that social services envisaged that the appellant might not remain in the United Kingdom. The report did not recommend that the appellant stay in the United Kingdom in Louise's best interests.
16. With regard to the special guardianship order of 26 September 2012, it said that Ms Wilson was to facilitate and agree contact between Louise's mother and father. The appellant had given an account of contact which was not as set out in the order. There was no evidence from Ms Wilson to confirm that there was a separate contact arrangement. It was argued that the appellant was seeking to exaggerate the contact she had with Louise in order to stay in the United Kingdom. The contact terms between Louise's parents were set out and that did not include the appellant.
17. The appellant was providing childcare for the two boys while their father was away. Their status in the United Kingdom did not depend upon her being here. Their father was their primary carer and he was responsible for arranging their childcare or obtaining someone else who could do it. They were teenagers so not in the same position as a very young, more dependent child. If the Tribunal found that it was in the best interests of the children for the appellant to be here then there was a wider proportionality assessment to be made. Other factors outweighed it. The appellant was in the United Kingdom on a visit visa and had overstayed and relationships had been formed and secured whilst her immigration status was precarious. There were people here who could look after the children. Her sister was not in court today and had not provided a statement in support. The appellant had said her sister was unwell and would not write a letter, but she was able to work full-time. The absence

of evidence undermined the claim of a very strong bond between the two. The appellant's presence in the United Kingdom had not prevented her sister from losing her home and they had not lived together for over a year. The appellant had made the odd claim that the Home Office insisted that she live with her brother-in-law. Any interference in her private and family life would be proportionate. As regards returning to Nigeria, she had had a good job previously and was educated and had her mother there and was capable of looking after herself. There was no reason to suppose that she would experience problems on return.

18. In his submissions Mr Pipi relied on his skeleton argument. As regards the argument that the appellant had developed family life without immigration status, this was wrong. The Tribunal was referred to the letters from Social Services. They had encouraged the appellant to come to the United Kingdom and family life had begun from then when she had status as a visitor. It was not possible for her to act as carer for all the children because of the structure of the family life. It would be very difficult for someone else to bring Louise from Ms Wilson's to her parents as it would be very hard for someone else to maintain the family life as currently structured and as it had been in existence for a long time. The children were used to the current structure and putting in a new person could not be in their best interests. They were attached to the appellant. She was involved in the facilitation of visits, bearing in mind the tension between Ms Wilson and her brother-in-law who did not get on. There was no evidence that they had reconciled.
19. With regard to the court order and the current arrangements which referred to Louise's stepfather taking her every two weeks, there was nothing to say that the position with the two boys was the same. At most it was a breach of the court order. Louise went to her siblings' home whether her stepfather was there or not so he saw her more often than the order provided for. It happened all too often in family circumstances and was done in the best interests of the children. It would be best to go back to the court and amend the order. No application to amend had been made but it did not mean that what was said to be happening was not happening. It was a concern, but the Tribunal had to consider the immigration aspects of the matter and whether it undermined the quality of the relationships and family life between the appellant and others. It did not affect the Tribunal's decision.
20. It was accepted that the contact arrangements did not say that there was a need for the appellant, but it was necessary to look who made it possible for her sister to function as she did. The extra handwritten medical report should be noted. Louise's mother was able to maintain family life with Louise because of help from the appellant. It could not continue without her. The absence of the appellant's sister today was not an undermining factor. It was not helpful to ask such a person with a mental health problem to come to court as their evidence could change at any minute. Someone with mental health problems might not give evidence before mental health Tribunals. The fact that she was working full-time was down to the support she got from the appellant and in this regard it was necessary to refer to Dr Haas's letter. The appellant was needed.

21. As regards her ability to work in Nigeria, she had left her job as she was encouraged to come to the United Kingdom. She could not be required to come. A letter of protest had been sent from the social worker when the application was refused for her to come. They could not say any more than that. That could be taken into account in considering the proportionality of return.
22. I reserved my determination.
23. I have summarised in some detail in the earlier decision and directions the evidence in this case as it was before the judge. There is a further short bundle in which in a letter of 30 May 2013 Mr Akudu repeats his support for the appellant and says that she is doing what she does best, facilitating the biological bond between Louise and her two siblings and doing what the Social Services expected of her, bringing the children together socially and otherwise. There is also a letter of 30 May 2013 from Chima Akudu, and also a letter from his brother, Jideofor, of the same date, both speaking fondly of the appellant and the care that she provides them, in particular when their father is away on business. There is also a letter from Ms Wilson of 30 May 2013 confirming the contents of her earlier letter of 29 September 2012 concerning the role of the appellant in Louise's life and expressing her wish that these contacts are maintained as it is beneficial to her.
24. There is also a contact order from the family court, dated 26 September 2012, making a special guardianship order to Ms Wilson for Louise. The terms of this are that Ms Wilson shall make Louise available for supervised contact with her mother Vivian at Ms Wilson's house once a week for an hour, to be pre-arranged by a telephone call made by Mrs Akudu, and also Ms Wilson shall make Louise available for contact with Mr Akudu fortnightly on Sundays between 10:00am in the morning and 3:00pm in the afternoon, again to be arranged in advance. It goes on to say that there shall be further or other contact as may be arranged between the applicant and the parties. That latter provision can perhaps be said to explain the more expansive arrangements that were described by the appellant in evidence. It seems that though the arrangement vis-à-vis Louise's mother is as set out in the order, Louise in fact spends the weekends with her brothers and stepfather (when he is in the United Kingdom) and the appellant.
25. There is also a copy of a medical report written by Dr Joanna Haas on 6 October 2011 in respect of the appellant who at that time was living with her sister, Louise's mother, at Wightman Road. Dr Haas expresses the view that Vivian needs regular support and encouragement and her understanding was that the appellant was living with her and looking after Louise every weekend and her brothers at alternate weekends at her brother-in-law's house as he sometimes had to work abroad. He said that with Vivian working but also having a history of neglecting her children and of erratic behaviour when unwell, it is desirable for the current arrangement with the appellant here to support her to be continued for several years, chiefly in Louise's interest. She said that if the appellant were to be asked to return to Nigeria

there would be a greater risk of her sister's mental health relapsing and of a breakdown in the relationship between Vivian and Louise. She does not feel that Vivian is fit in the long-term to look after Louise without close supervision.

26. There is also a handwritten note of 19 July 2013 on this report confirming that the appellant gives Vivian a lot of ongoing support in managing her life and her children and moral support in respect of her financial difficulties. Dr Haas says that were the appellant to be returned to Nigeria there is a greater risk of her sister's mental health relapsing and of a breakdown in Vivian and Louise's relationship. She asked that the present arrangement be allowed to continue for some years.
27. It is also relevant to note that the appellant has been living with her brother-in-law and the two boys since April 2012, having previously lived with her sister. Her evidence was that she sees her sister four or five times a week and she cooks for her and makes sure that everything is all right. It is the case that Vivian is in full-time employment as a care assistant.
28. The appellant is, therefore, involved in Louise's life in that she collects her from Ms Wilson's house and takes her to spend the weekends with her half-brothers and stepfather, when he is there. It is unclear to what extent she is involved in facilitating the supervised contact that her sister Vivian has with Louise on the one hour a week when she sees her. Louise's contact with her mother occurs at Ms Wilson's house and the contact is arranged by Vivian and Ms Wilson. It is clear that the relationship between Ms Wilson and Mr Okafor is not good and hence the appellant has a role to play in effectively avoiding the need for them to come into contact with each other by collecting Louise and bringing her to Mr Okafor's house to see him and the boys at weekends. It is relevant to note that the boys are respectively 17 and 15 years old. Jidefor was born on 23 September 1995 and Chima on 23 October 1997. It is also relevant to note that Vivian although she still suffers from schizophrenia, appears to be able to hold down full-time employment as a care assistant, and that she is now living on her own, though the appellant visits her four or five times a week and cooks for her and sees that everything is all right.
29. I have set out above what is said by the respective parties concerning the role that the appellant plays in Louise's life. I remind myself of what is said in the CAF/CASS Report, in particular at paragraph 13, (the date of the report is 25 May 2012) about the important role that the appellant has played in Louise's life, particularly in relation to facilitating contact between Louise and her birth family. That was at a time when the appellant was living with Louise's mother Vivian, when Louise would stay with Vivian and the appellant at weekends. It is also relevant to note at paragraph 35 of that report that Vivian said to the author of the report, Jane Biggs, the guardian ad litem, that she believed she would be able to care for Louise alone although she acknowledged that the appellant's support would be helpful, this was not essential. At paragraph 43 Ms Biggs refers to the appellant having been an important figure in Louise's life. At paragraph 62 she says that sadly the appellant's status in the United Kingdom remains insecure and it is uncertain whether this will

change. She says that it is evident from the history of the case that the appellant has been pivotal in facilitating Louise's contact with her birth family as well as supporting Ms Akudu and helping her maintain good mental health. She said that the appellant cannot be deemed to offer a viable option as a long-term carer for Louisa given that her status remains so uncertain. Subsequently, of course a special guardianship order was granted to Ms Wilson in respect of Louise and that remains the situation. Ms Biggs recommended that contact between Louise and the birth family continue at the current level and frequency, supervised by the appellant.

30. The evidence as it stands now is somewhat different however. The appellant lives with Mr Okafor and the boys and facilitates Louise's visits to them at weekends. It is unclear to what extent, if at all, she is involved in the contact that Louise has with her mother. If the appellant left the United Kingdom, then someone else would have to collect Louise from Ms Wilson's and take her to her half-brothers and stepfather. Mr Okafor would have to make arrangements for someone else to look after the boys, although if they are now respectively in their 18th and 16th years, that need is clearly diminishing and will go entirely before too long. Clearly the appellant's sister Vivian remains vulnerable, though she is able to hold down a job, and it is a little surprising that no evidence has been provided from her concerning the support that the appellant gives her.
31. The main relationships required to be considered in this case are those between the appellant and the children. Considering for a moment the position of the two boys separately, it is on balance in their best interests for the appellant to continue to provide the support to them that she is able to do, although that support could to a significant extent be replaced by support from another person were the appellant to leave the country. Balanced against the interests of immigration control in assessing proportionality of removal, I consider that the balance in respect of them comes down in favour of the proportionality of removal.
32. As regards Louise, it is in Louise's best interests for the appellant to remain in the United Kingdom. She is not her mother or her special guardian, but she is a relative who has played a significant role in her life for the last few years. The question of whether despite it being in Louise's best interests for the appellant to remain in the United Kingdom, that is outbalanced by the needs of immigration control is a matter that is quite finely balanced. The main role played by the appellant in the United Kingdom is that of support for the two boys and to an extent her sister. As regards the latter, this has to be seen in the context of the fact as set out above she is able to hold down a full-time job. The appellant said in her statement of 8 August 2013 that the reason that her sister is able to visit Louise at Ms Wilson's house is because of the support system provided by the appellant, who ensures that she attends hospital and/or GP appointments for injections once a month and cooks for her. She said that without the support she receives from her that she will relapse as she has done in the past and will not be able to visit Louise any more or for some time. In this regard I bear in mind also what is said by Dr Haas in the handwritten endorsement to the earlier medical report. As regards Vivian, though it would be disadvantageous to

her if the appellant were removed, the appellant does not live with her, and she (Vivian) is able to hold down a full-time job. The support the appellant provides to her is not support that only the appellant can provide. With regard to Louise, clearly the appellant plays a role in her life, but the appellant does not live with Louise, is not her guardian, and someone else could accompany Louise to see the boys and their father at weekends. As a final point, I do not consider it has been shown that the appellant would be unable to find work on return to Nigeria, given her employment history there. On balance I consider that it has been shown that the appellant's removal would not be disproportionate, and the appeal is dismissed under Article 8 of the ECHR.

Signed

Date

Upper Tribunal Judge Allen