



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/25921/2013

THE IMMIGRATION ACTS

Heard at Field House

On 22nd July 2014

**Determination
Promulgated**

On 5th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR SHINA TOMIDE ATOYEBI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr G Saunders, Home Office Presenting Officer

For the Respondent: Mr R Ahmed, Counsel

DETERMINATION AND REASONS
EXTEMPORE JUDGMENT

1. There is no anonymity order in place and I am not invited to make one.
2. The Appellant in these proceedings was the Respondent in the First-tier Tribunal, and I refer to the parties as they were known in the First-tier Tribunal for my own convenience.

3. The Respondent appeals a decision of First-tier Tribunal Judge Kamara who in a determination promulgated on 29th April 2014 allowed the Appellant's appeal against the refusal of his application for further leave to remain in the United Kingdom as the husband of someone who is here with discretionary leave to remain until 2016, and asserted in the context of the family and private life rights the relationship with his spouse and also with two children born on 1st January 2012 and 1st August 2013. The Article 8 provisions of the Immigration Rules at Appendix FM exclude switching to leave to remain as the spouse of someone with discretionary leave to remain.
4. The Respondent appeals with permission on the grounds that the decision of the First-tier Tribunal Judge is flawed in terms of the assessment of Article 8 on the basis that the judge has failed to consider that the Appellant and his spouse and children could relocate to Nigeria and specifically in the grounds asserts that there are no insurmountable obstacles to that relocation, and further Mr Saunders, in elucidating the grounds before me, asserts that the fact of the wife having leave to remain is not of itself a reason to find that such relocation would be insurmountable or unreasonable.
5. I find that the decision does not reveal any material error of law. In terms of the reasoning of the judge specifically on the question of whether or not there are insurmountable obstacles to the Appellant's family returning to Nigeria with him in order to continue their family life the judge applied the correct test, which is the reasonableness of expecting the Sponsor to return to Nigeria. The assessment is made on the position as at the date of hearing i.e. that the sponsor does have leave in the United Kingdom. The evidence of her circumstances and difficulties in relocating was not challenged. The judge finds on the basis of her unchallenged evidence that it would not be reasonable to expect her to relocate, and that finding is set out at paragraph 16. The judge refers to the Sponsor's employment, the home that she has established here over her fourteen years of residence, and in that context has referred back to the determination of Immigration Judge Moore, who found in 2009, on the basis of her own private and family life rights in the United Kingdom as established at that time, that it would not be right to require her to return to Nigeria.
6. The judge also takes into account the best interests of the children and finds that it would not be reasonable to expect them to relocate to Nigeria and that to do so would have significant adverse consequences for them. The Respondent prays in aid the case of Zoumbas v SSHD [2013] UKSC 74 but in doing so fails to note that in that case Lord Hodge in the paragraphs quoted in the grounds makes it clear that where a decision-maker does find, as Judge Kamara found here, that there would be serious detriment to the wellbeing of the children if they were to relocate to Nigeria, then one could not say that the decision was irrational. The judge also noted that in that case both parents lacked any basis to remain under the rules, and were being returned together, so that the proposal was to remove the family as a unit at that time. That of course was not the position in this case as the Sponsor has leave to remain until 2016, and I have already explained that the judge was entitled to conclude that in the

circumstances of this case it was not reasonable to expect the Sponsor relocate.

7. At best the decision can be described as being generous but it is not a conclusion which was not open to the judge on the evidence, and it is not a decision which is irrational or perverse.
8. Taking into account all of those reasons I find no material error and the decision of the judge stands.

Signed

Date

Deputy Upper Tribunal Judge Davidge