Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/04424/2014
IA/04430/2014
IA/04436/2014
IA/04440/2014
IA/04449/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 December 2014	**On 26 January 2015**
Prepared 6 January 2015	

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

JOYCE ERETATYE IBRAHIM LAGUNDOYE
FUNMILOLA OLUWAFUMI IBRAHIM LAGUNDOYE
OLUWATOBI IBRAHIM LAGUNDOYE
KOLAWOLE IDRIS IBRAHIM LAGUNDOYE
JIMOH IBRAHIM LAGUNDOYE

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss R Rhind, IR Immigration Law LLP
For the Respondent: Miss J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The principal appellant, to whom I will refer as “the appellant”, is a citizen of Nigeria. She appeals, with permission, against a decision of Judge of the First-tier Tribunal Edwards who, in a determination promulgated on 18 September 2014, dismissed her appeal against a decision made on 7 January 2014 to remove her to Nigeria and to refuse leave to remain on Article 8 grounds. The other appellants are her children.

2. It is of note that the judge had found that the appellant did not have an in country right of appeal.

3. The appellant appealed on the basis that she had had an in country right of because she had been served with forms IS151A and IS151B, which was an immigration decision which carried an in country right of appeal, and therefore the First-tier Tribunal Judge had jurisdiction to hear her appeal. The other appellants had been served with forms IS 151A only and the fact that different decisions had been made with regard to the appellant's children was irrational as they were dependants on their application. Requests had been made to the respondent to remake the decision but that had not happened. It was alleged that the judge had formed an adverse view of the appellant’s case that had tainted his view of her appeal and he was wrong to find that she did not have a family or private life which would be interfered with by her removal. It was also claimed that the judge had failed to have regard to the totality of the evidence regarding the appellant's family which included the fact that the appellant's son had had a serious injury requiring treatment over a period of two years which had prevented him leaving Britain and that the children were settled in their schools here and there have been considerable delays in the appeals being heard.

4. It was stated that the judge had failed to have regard to the fact that the appellant only sought leave to remain “until her husband had completed his undergraduate degree – which would be in January 2015. He failed to have regard to whether it would be proportionate as at the time of the appeal of 12 September 2014 for the respondent's decision to be upheld”.

5. It was claimed there was no proper consideration of the Article 8 rights of the appellant.

6. Permission to appeal was granted by Judge of the First-tier Tribunal Ransley who stated that it was arguable that although the judge had found that the appellant did not have a right of appeal it was irrational for him to have gone on to consider it. Moreover, permission to appeal was granted

on the basis that the judge had not given sufficient reasons for finding that the appellant was not exercising private and family life in Britain.

7. Judge Edwards in paragraph 3 of the determination stated that the appellant had arrived in Britain with a multiple entry visit visa valid until 21 June 2010 on 27 December 2009. She had been issued with a further multi-entry visit visa valid from 20 April 2011 until 20 April 2013 and had then made three visits to Britain as a consequence, the last being on 15 September 2012.

8. On 26 January 2014 she had made an application for leave as a Tier 4 partner but that been refused. The judge went on to say that between 3 April 2009 and 2 February 2011 three unsuccessful attempts to apply for leave to remain under Article 8 had been made before on 18 April 2013 making the application which led to the appeal before him.

9. With regard to the issue of whether or not he had jurisdiction, the judge stated in paragraph 7 that First-tier Judge Law sitting as a duty judge had found there was no right to an in country right of appeal by the children and by the appellant and had dismissed all their appeals on 26 February 2014 for want of jurisdiction. He stated that "Unfortunately, it appears that while the determinations in respect of the children were served that in respect of this appellant was not, for some unknown reason". He went on to say that Miss Rhind had sought to persuade him that Judge Law had been in error and the children did have a right of appeal and that he should join them in the current hearing but that he had refused to do so as there was nothing before him to show that Judge Law's decision had been overturned by the Upper Tribunal and the High Court and he was not prepared or indeed able to act as an appeal Tribunal from Judge Law. He said therefore that he was left with the decision that there was no valid appeal for the children but in any event decided to consider the evidence before him to see if any appeal should have succeeded or not.

10. He pointed out that the appellant could not succeed under paragraph 276ADE of the Rules and in the section headed "The Law – Human Rights" he stated that he was concerned with the foreseeable consequences of the refusal of leave to remain where there were compelling circumstances that justified a grant of leave outside the Rules.

11. He noted the appellant's immigration history and the reasons given for the application for the extension of stay. He also noted that the appellant's eldest child, Jimoh, had sustained a serious knee injury which had required three operations but noted that the appellant's general practitioner had

stated that Jimoh had made a full recovery and that no further problems were anticipated.

12. In paragraph 21 he stated that the evidence placed before him was not at all impressive and there had been nothing to show that this appellant could not cope alone while her husband was away from home. He said there was nothing exceptional about the case and that nothing turned on the injury to Jimoh. He concluded that the appellant could not succeed under the Rules and there was nothing to justify the grant of leave to remain outside the Rules.

13. In her submissions to me Miss Rhind referred to form IS151A which had been served on all the children and pointed out that the form IS151B, the forms for the children, stated that they had a right of appeal after removal from the United Kingdom. With regard to the first appellant, form IS151B stated that she had a right of appeal under section 82(1) and which stated that if she had a right of appeal she would not have to leave Britain while the appeal was in progress. She stated that the refusals related back to an application made on 18 April 2013 and that at that time the appellant still had a valid visa and that they had been given leave to enter. She claimed therefore there was jurisdiction for the Tribunal to deal with appeals in country and that it was not for the Upper Tribunal to decide whether or not there was a right of appeal – that was a decision for the Secretary of State. She pointed out that the Rule 24 statement lodged on behalf of the respondent did not challenge the jurisdiction point. Moreover she argued that the judge had erred in not considering the rights of the children and that that decision was irrational. She accepted that applications had been made for the appellants to remain as Tier 4 dependants in December 2012 and January 2013 and that those had been refused without a right of appeal but stated that thereafter human rights application was made the refusal of which should engender a right of appeal.

14. I note the terms of the letter of 8 January 2014 to IR Immigration Law LLP which referred to the first appellant's application. The letter states:

> "1. Thank you for your letter of 28/05/2013 in which you request that your client's case is reconsidered under the European Convention on Human Rights (ECHR). A response was sent to you on 03/01/14 explaining that reconsideration wasn't possible as the policy on reconsiderations has changed as of 12/11/2012. Therefore a new human rights decision has been considered with the information already provided."

15. Thereafter the writer of the letter set out the appellant's immigration history including the fact that an application for leave to remain on human

rights grounds had been made and refused on 18 May 2013 with no right of appeal. Having considered the appellant's circumstances under the Rules including EX1 of Appendix FM and Rule 276ADE the respondent concluded that the appellant did not qualify for leave to remain on Article 8 grounds.

16. The letter, however, went on to state

> "Your client has now been served form IS15A on 07/01/2014 informing your client of her immigration status and liability to detention and removal. Your client may appeal against the decision to refuse her human rights application under Section 82 of the Nationality, Immigration and Asylum Act 2002 on the basis that one or more of the grounds of appeal contained within the notice of decision IS151B attached. Your client is entitled to remain in the United Kingdom whilst the appeal is pending."

17. The first appellant was served with form IS15A parts 1 and 2 which refer to a right of appeal on the basis that the decision was unlawful because it was incompatible with her rights under the ECHR.

18. Judge Law found Section 92(4) which refers to a right of appeal on human rights grounds did not apply because the appellant had not proved that her asylum or human rights claim had been made before the respondent's decision to remove. He referred to the determination in **Nirula [2012] EWCA Civ 1436**. He stated therefore he found that there was no valid appeal before the Tribunal. For the reasons given below I consider that the appellant did have a right of appeal and, indeed, the respondent has never argued that she did not.

19. I have considered the documents before me. The notice of decision served on the appellant makes it clear that the decision was made under Section 10 of the Immigration and Asylum Act 1999. It stated that she has a right of appeal under Section 82 (1) of the Nationality, Immigration and asylum Act 2002 and refers to subsections 82(2) (h) (g). It is on that basis that the appellant has an in country right of appeal under Section 92 (2) of that Act – the decision is one to which section 82 (2) (g) applies.

21. However, there is no indication that such decisions were made in respect of the other appellants. They are, of course, clearly the dependents of their mother and as such their right under Article 8 of the ECHR are relevant in this appeal.

22. The Senior Presenting Officer who drafted the Rule 24 notice invited the Tribunal to determine the appeal with a fresh oral hearing "to consider

whether the appellant's human rights claim under Section 92 NIAA 2002" (sic).

23. I consider that the Judge erred when he stated that the appellant did not have an in-country right of appeal and that he did not consider the appellant's human rights claim in sufficient detail: these were material errors of law. I therefore set aside the determination of the Judge of the First-tier tribunal. Moreover, I consider that it is appropriate to remit this appeal for a fresh hearing in the First-tier as I consider that the terms of the Senior President of Tribunals Practice Directions are met.

24. I have therefore found that the appellant has an in-country right of appeal but her children do not. However, in effect that is of little importance as their rights are inextricably linked with those of the appellant and will have to be considered at the fresh hearing.

Notice of Decision

The appeal is allowed the extent that it is remitted to the First-tier tribunal for a hearing afresh on Article 8 grounds.

Signed Date
Upper Tribunal Judge McGeachy