Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/15007/2014
IA/15068/2014

THE IMMIGRATION ACTS

Heard at : Field House	**Decision and Reasons Promulgated**
On : 27 October 2015	**On: 9 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS AGHARESE FLORENCE FISHER
MR ROWLAND OLUMUYIWA FISHER
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:
For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer
For the Respondents: Ms C Charlton, Bhogal Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing the appeals of Ms Fisher and her husband against the respondent's decision to refuse their applications for leave to remain in the United Kingdom.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Ms Fisher and her family as the appellants, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellants are wife and husband and are citizens of Nigeria. They were born respectively on 31 March 1954 and 8 April 1955. The first appellant entered the UK during 2002 (having been refused a visit visa in August 2002). In February 2005 she submitted an unsuccessful application for indefinite leave to remain and on 31 March 2007 a further application for indefinite leave to remain under the seven year concession. Both applications were refused on 18 June 2008. The first appellant's appeals against these decisions were dismissed on 22 October 2008 and a subsequent High Court Review refused. The second appellant was issued with a multiple visit visa on 20 February 2003, valid until 21 February 2005. The appellants applied for indefinite leave to remain under the Immigration Rules and under Article 8 of the European Convention on Human Rights on 6 June 2013. Both appellants were in the UK unlawfully at the time. Also included on their application were their two adult children.

4. The applications for both appellants were refused on 7 March 2014. Their appeals, and that of their two adult children who were refused on 25 March 2014, came before First-tier Tribunal Judge Dineen on 19 January 2015. The judge heard oral evidence from the two appellants and from their two adult children who were appellants in the First-tier Tribunal. The judge found that the appellants' younger adult child met the requirements of paragraph 276ADE(1)(v) as she was over 18 and under 25 at the date of the application and had spent at least half her life living continuously in the UK. In addition and in the alternative the judge found that both adult children met the requirements of paragraph 276ADE(1)(vi). In relation to Mr and Mrs Fisher (who were the first and second appellants in the First-tier Tribunal) although the judge was of the view that there would not be a compelling case under Article 8 outside of the Immigration Rules, the judge allowed their appeals under paragraph 276ADE as the judge was satisfied that the appellants had no ties, including social, cultural or family ties with Nigeria.

5. Permission to appeal to the Upper Tribunal was sought by the respondent on the grounds that the judge had misdirected himself and or had provided inadequate reasoning in relation to the appellants' family ties in Nigeria. It was submitted that the judge had failed to carry out an objective assessment of the ability of the appellants to reconnect to family members in Nigeria and to give reasons why the presence of these family members could not result in effective support. The grounds relied on the decision of Bossadi (paragraph 276ADE: suitability; ties) [2015] UKUT 00042 (IAC).

6. Permission to appeal was granted on 13 July 2015. Thus the appeals came before me

Appeal Hearing

7. Although Mr Whitwell initially indicated that he was seeking to argue that the appellant's eldest child was included in the request and therefore the grant of permission, it was clear from the papers before me which included two separate appeal forms (with identical grounds) for just Mr and Mrs Fisher (the first and second appellants before the First-tier Tribunal) that permission had only been sought (and granted) in respect of the two appellants. Mr Whitwell conceded that this must be the case.

8. Mr Whitwell argued that paragraph [30] of the decision referred to a sister in Nigeria who is a widow and paragraph [31] referred to a former printing business which had now been taken over by other family members. Mr Whitwell argued that there was also the second appellant's line of family in Nigeria. Mr Whitwell argued that Bossadi cannot be distinguished as the appellants had sought to do in their Rule 24 response. The judge had fallen into the error of approaching the matter of family ties as a purely subjective one, rather than undertaking an objective assessment.

9. Ms Charlton relied on the Rule 24 response. Although she initially argued that Bossadi was not promulgated until after the First-tier Tribunal hearing, the First-tier Tribunal decision was not promulgated until 28 April 2015 significantly after the decision was issued in Bossadi. There is no merit in that argument and Ms Charlton conceded as much before me. Ms Charlton submitted that the judge had found all witnesses credible. Whilst he does mention a widow and a family home he accepted they had departed due to bad experiences. She submitted that the respondent's argument is in effect a disagreement with the findings which was based on subjective and objective findings.

10. I reserved my decision. Although Ms Charlton indicated that both appellants were available to give evidence as to their lack of ties in Nigeria, both Mr Whitwell and Ms Charlton indicated that there was sufficient evidence and information before me (including in the judge's record of proceedings) to enable me to remake the decision without further evidence should I find an error of law.

Consideration and Findings

11. At the relevant dates of application and decision in this case the relevant Immigration Rule read as follows:

> '276ADE. The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
>
> (i) Does not fall for refusal under any of the grounds in Section 1.2 to S-LTR 2.3. and S-LTR.3.1 in Appendix FM; and
>
> (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
>
> (iii) Has live continuously in the UK for at least 20 years (discounting any period of imprisonment); or

(iv) Is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or

(v) Is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.'

12. The argument in the appellants' Rule 24 response that in effect Bossadi had no application as it related to the inapplicability of paragraph 276ADE to foreign criminals and therefore what was said in relation to 276ADE and ties, was plainly obiter, is misconceived. Bossadi is a reported decision of the Upper Tribunal and as such what it says in relation to the requirements set out in paragraph 276ADE(vi) (in force from 9 July 2012 to 27 July 2014) has general application and is to be followed. I note Ms Charlton, correctly in my view, did not seek to persuade me of this line of argument at the hearing.

13. The judge clearly made no reference to Bossadi and set out the authority of Ogundimu (Article 8 – new rules) (Nigeria) v SSHD [2013] UKUT 00060 (IAC). Having set out paragraph [123] of that decision the judge at paragraph 64 went on to find as follows:

'I am satisfied on the balance of probabilities that the first and second appellants having, albeit unlawfully and in a blatant manner, been in the UK since respectively 220 and 2003, shown on the evidence which I accept, that they satisfied at the material time the terms of paragraph 276ADE91)(vi) which were applicable at the time of the respondent's decision.'

14. It was incumbent on the judge to have regard to the principles set out in Bossadi which confirmed that the requirement set out in paragraph 276ADE(1)(vi) from 9 July 2012 to 27 July 2014 requires a 'rounded assessment as to whether a person's familial ties could result in support to him in the event of his return, an assessment taking into account both subjective and objective considerations and also consideration of what lies within the choice of a claimant to achieve.'

15. It is clear however, considering the judge's decision in its entirety, that he did make this rounded assessment, taking into account both subjective and objective considerations and 'what lies within the choice of a claimant to achieve'.

16. Although the judge's reasoning at paragraph 65 was brief, crucially he accepted the evidence which was before him. This finding must be read therefore in conjunction with all the evidence and the judge's findings at paragraph 52 that:

'... notwithstanding the poor immigration history of the first and second appellants, the evidence of the witnesses is credible because that of each witness is consistent within itself, with the evidence of the other witnesses; and with the available documentary evidence'.

17. That evidence included, as recorded at paragraph 35 of the decision:

> 'The first and second appellants state that they have severed their ties with Nigeria. If they were to return there, they would have nothing and they would be homeless and destitute. Nigeria is not a safe country, and their most recent departure from it followed bad experiences there, although they did not apply for asylum'

18. Although Mr Whitwell initially argued that paragraph 35 was in effect an 'embryonic asylum claim' which had not being argued, nevertheless he conceded that the judge's findings that the evidence was credible, encompassed all the evidence before the judge.

19. Whilst clearly not an asylum claim, the judge did accept that the appellants left Nigeria 'following bad experiences' and there was evidence before the judge including in witness statement form including of trauma experienced by the appellants at the hands of armed robbers.

20. In finding the appellants credible, the judge accepted that evidence; although perhaps a generous finding, it was one that was open to him on the evidence: in accepting this evidence the judge necessarily assessed and discounted therefore the line of reasoning set out in Balogun v UK app.no 60266/09 [2012] ECHR 614 at [51] that the ties that existed 'could be pursued and strengthened by the applicant if he chose'. As the judge had found that the appellants had been credible in relation to their negative experiences in Nigeria, it was open to him to find that objectively they could not pursue and strengthen ties, such that remained in Nigeria.

21. I am satisfied therefore that the judge did not err in his findings in relation to paragraph 276 ADE(1)(vi). In the alternative any error in not expressly considering the reasoning of Bossadi and Balogun is not material as the judge made a wider assessment than just the appellants' objective evidence of no ties, but considered that they had left Nigeria following bad experiences which would have involved an objective consideration that such ties that remained dormant could not be revived.

DECISION

22. The making of the decision of the First-tier Tribunal did not involve an error on a point of law and shall stand. The Secretary of State's appeal is dismissed.

Signed: Dated: 2 November 2015

Deputy Judge of the Upper Tribunal Judge Hutchinson