IAC-AH-DP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/17141/2014

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 3rd November 2015	**On 11th November 2015**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

T O
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms R Pettersen
For the Respondent: Ms E Norman

DECISION AND REASONS

1. The Appellant in this appeal to the Upper Tribunal shall, hereinafter, be referred to as the Secretary of State. The Respondent in this appeal to the Upper Tribunal shall, hereinafter, be referred to as the Claimant. This is the Secretary of State's appeal to the Upper Tribunal in respect of a decision of the First-tier Tribunal (Judge Stott) promulgated on 8th January 2015 allowing the Claimant's appeal against the Secretary of State's decision of 25th March 2014 to remove her from the UK under Section 10 of the Immigration and Asylum Act 1999.

2. By way of background, the Claimant is a citizen of Nigeria and was born on 18th December 1968. She has a daughter, also a citizen of Nigeria, who was born on 29th April 1998. The Claimant had, prior to coming to the UK, lived in Italy for a number of years and, indeed, her daughter had been born in that country. The two of them then entered the UK on 12th July 2005 in possession of visit visas conferring leave to enter until 15th September 2005. The Claimant and her daughter remained in the UK after their respective visit visas had expired.

3. There is a history of the Claimant having made a number of applications on behalf of herself and her daughter to regularise her stay in the UK but all of those applications have been refused. Ultimately, the Secretary of State took the decision referred to above with respect to removal. It was intended to remove the Claimant and her daughter together and to return them to Nigeria.

4. As noted, the Claimant's appeal to the First-tier Tribunal was successful. It was allowed under what might be referred to as the Article 8 related Immigration Rules on the basis that, in particular, the requirements of paragraph EX.1(a) were met. The First-tier Tribunal was satisfied that, in this context, the Claimant had a genuine and subsisting parental relationship with her daughter, her daughter of course being a child, that the daughter had lived in the UK continuously for at least seven years immediately preceding the date of application and it would not be reasonable to expect her (that is the daughter) to leave the UK.

5. It is perhaps helpful, at this stage, to set out the relevant provisions of EX.1 which are contained within Appendix FM to the Immigration Rules. They are as follows;

> EX.1. This paragraph applies if –
>
> (a)
>
> (i) the applicant has a genuine and subsisting parental relationship with a child who –
>
> (aa) is under the age of 18 years, or was under the age of 18 years when the applicant was first granted leave on the basis that this paragraph applied;
>
> (bb) is in the UK;
>
> (cc) is a British citizen or has lived in the UK continuously for at least the seven years immediately preceding the date of application; and
>
> (ii) it would not be reasonable to expect the child to leave the UK.

6. Having summarised, in its determination, the competing arguments and some of the evidence relied upon by the respective parties, the First-tier Tribunal explained its key conclusions in this way;

"11. I accept the evidence which has been provided by the Appellant and her daughter as to the length of time that they have spent away from Nigeria living in Italy and in this country.

12. I also accept the documentary evidence which clearly shows that the Appellant's daughter has taken full advantage of the educational opportunities presented to her in this country and is thriving with every prospect of excellent career development.

13. I take account however of the public interest factors and responsibilities placed upon the Respondent to maintain firm and effective immigration control and to this extent take note of Section 117A-D of the amended 2002 Nationality, Immigration and Asylum Act.

14. I have also taken particular account of the principles to be followed when assessing the best interests of children when considering the proportionality assessment under Article 8, (see paragraph 10 of the case **Zoumbas v SSHD [2013] UKSC 74**). I accept that the interests of the child are a primary consideration which can be outweighed by public interest factors. I also take account of the fact that a child must not be blamed for matters for which he is not responsible such as the conduct of a parent.

15. In this case the Appellant's daughter has been moved as a child in 2005 from Italy to this country and has only had two short visits back to Nigeria. She has lived here ever since and prior to that was living in Italy since her birth in 1998. She has never therefore experienced the language, culture or environment of Nigeria. It is apparent that the educational system in Nigeria is far inferior to that available in this country but on its own that fact would not provide a determinative reason for her not returning to Nigeria with her mother.

16. However, in view of the massive cultural change and adaptation which would be required of the Appellant's daughter, I consider that it would not, at this stage, after living here for nine years and in Italy for seven years, be reasonable to expect her to relocate with her mother to such an environment.

17. In view of that decision I consider that the Appellant has satisfied the provisions of Appendix FM as regards the parental requirements and also those set out in Section EX.1(a)(ii)."

7. The Secretary of State applied for permission to appeal to the Upper Tribunal. The three grounds of appeal advanced were to the effect that the First-tier Tribunal had erred in failing to identify elements within the Claimant's daughter's private life which would point towards her return to Nigeria with the Claimant as being unreasonable; in failing to consider whether the Claimant's daughter would be able to adapt to life in Nigeria and in failing to take into account "any countervailing factors", thereby failing to reach a balanced judgment.

8. Permission to appeal was granted, in these terms, by a Judge of the First-tier Tribunal;

> "An arguable error of law has arisen in relation to the extent of the Judge's consideration of the application of the criteria in Section 117. A further

arguable error of law arises in the context of the consideration of the issue of adaptation."

9. The matter was then listed before me to consider whether the First-tier Tribunal had erred in law such that its decision ought to be set aside and to go on, if necessary or appropriate, to remake the decision.

10. Ms Pettersen, for the Secretary of State, relied upon the grounds of appeal and the further point, regarding Section 117 of the Nationality, Immigration and Asylum Act 2002, which had been raised in the grant of permission. She contended that the First-tier Tribunal had failed to take into account, in considering whether it would be reasonable for the daughter to go to live in Nigeria, the fact that her mother is Nigerian and could assist her with the adaptation process and that English is widely spoken in Nigeria. It had erred in treating the daughter's length of residence in the UK and matters relating to her education here as being determinative. Whilst Section 117 had been mentioned there had been no overall consideration of the Claimant's history and matters relating to how the two would support themselves had not been factored in when considering reasonableness.

11. Ms Norman, for the Claimant, relied upon her written "Order 24" response. She pointed to evidence which had been before the First-tier Tribunal, and which she said appeared to have been accepted, suggesting that the Claimant and her daughter had become estranged from their family in Nigeria because of a risk the daughter might be subjected to female genital mutilation. It had been accepted that the Claimant's daughter had never lived in Nigeria. She had only visited for two brief periods.

12. It is also right to note that, once I had heard submissions regarding the error of law issue, an application was made by Ms Norman, on behalf of the Claimant and in particular her daughter, for an anonymity order. Ms Norman informed me that a member of the press was in the hearing room, as of course is permitted, but said that it would be inappropriate for any details to be published regarding the Appellant's daughter who, of course, remains a child. There were, she said, some sensitive background issues regarding the risk of female genital mutilation. Ms Pettersen indicated that she did not oppose the making of such an order.

13. I have concluded that the First-tier Tribunal did not make an error of law such that its decision shall stand. I explained my reasons orally, albeit briefly, to the parties and I now set them out in full.

14. As to the first ground relied upon by the Respondent, I do not think it right to say that the First-tier Tribunal failed to identify any elements of the Claimant's daughter's private life in the UK which would point towards her return to Nigeria as being unreasonable. What the First-tier Tribunal did was to note, in particular, the fact that the daughter had never lived in that country, the oral evidence as to that having been accepted, and that she had only had two short visits there. It seems to me that the fact that

she had lived most of her young life in the UK and had never lived in Nigeria at all was significant and was a matter of obvious relevance as to the reasonableness or otherwise of her going to live in Nigeria.

15. As to the second ground, the First-tier Tribunal clearly did consider the question of the daughter's ability to adapt to life in Nigeria and it was that which led it to say what it did at paragraph 16 of its determination. It had, prior to reaching the conclusion contained in that paragraph, noted some obstacles to adaptation, being the fact that she had never experienced "the language, culture or environment of Nigeria" and that she had only ever lived in Italy and the UK.

16. As to the third ground, the Secretary of State does not say, in the grounds, what specific "countervailing factors" the First-tier Tribunal ought to have taken into account but did not. In any event, as Ms Norman points out, it did take into account the interests of immigration control as a countervailing factor as noted at paragraph 13 of its determination.

17. As to the point regarding Section 117 of the Nationality, Immigration and Asylum Act 2002, again, at paragraph 13, it clearly took it into account. It is right to say that it did not specifically address the various factors contained within the Section but I see nothing in its determination to suggest that it lost sight of them or that, having said it was taking them into account, it did not do so.

18. It might be thought that the reasoning of the First-tier Tribunal was relatively brief. However, it seems to me that the Grounds of Appeal, essentially, amount to what might be characterised as "reasons challenges". In that context the requirement of a Tribunal is to provide adequate reasons. In my judgment that standard has been reached.

19. I conclude, therefore, that the First-tier Tribunal did not make an error of law with the consequence that its decision shall stand.

20. As to anonymity, as indicated, Ms Norman made an application to me for such an order, the First-tier Tribunal not having made one. Having heard what she had to say, as summarised above, and having noted that Ms Pettersen was not opposing the application, and bearing in mind the Appellant's daughter is a minor, I decided to make such an order and indicated, orally, at the hearing that I would.

Conclusions

21. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

22. I do not set aside the decision.

Anonymity

23. I make an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Therefore, the Claimant and members of her family are granted anonymity throughout these proceedings. No report of these proceedings, in whatever form, shall directly or indirectly identify the Claimant or any member of her family. Failure to comply with this order could lead to a contempt of court.

Signed Date

Upper Tribunal Judge Hemingway

TO THE SECRETARY OF STATE
FEE AWARD

I make no fee award.

Signed Date

Upper Tribunal Judge Hemingway