Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/20523/2014
IA/20522/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 December 2014	**On 9 January 2015**
Prepared 19 December 2014	

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ESTHER IHEBIRINACHI OHUROGU
MASTER EMMANUEL OHURUOGU

Respondents

Representation:

For the Appellant: Miss J Isherwood, Senior Home Office Presenting Officer
For the Respondents: Mr S Nwaekwu, Messrs Moorehouse Solicitors

DECISION AND REASONS

1. The Secretary of State appeals, with permission against a decision of Judge of the First-tier Tribunal Juss who, in a determination promulgated on 11 September 2014, allowed the appeals of Mrs Esther Ohuruogu and

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her son, Emmanuel Ohuruogo against a decision of the Secretary of State to refuse them leave to remain on human rights grounds.

2. Although the Secretary of State is the appellant before me I will refer for ease of reference refer to her as the respondent as she was the respondent in the First-tier. Similarly I will refer to Mrs Esther Ohuruogu and Emmanuel Ohuruogu as the appellants as they were the respondents in the First-tier.

3. The appellants are citizens of Nigeria born in August 1965 and May 1996 respectively. They entered Britain as visitors in July 2005 and on expiry of their leave to remain overstayed. In August 2012 applications were made for them to be granted leave to remain on the basis of their family life here. Those applications were refused on 16 September 2013 with no right of appeal. A fresh claim application was then made and after judicial review proceedings were issued a further decision to refuse leave to remain was made which carried a right of appeal.

4. The Secretary of State, in a letter dated 1 May 2014, set out the appellants' immigration history and stated that the first appellant could not succeed under the "parent route" nor indeed under the private life provisions and further, that the second appellant could not succeed under the "child route" or under the private life route. Leave outside the Rules was considered as was Section 55 and it was stated that it was relevant that the appellants would be returning to Nigeria as a family unit and could continue to enjoy their family life together. It was also stated that the appellants were liable to administrative removal in accordance with Section 10 of the Immigration and Asylum Act 1999.

5. The appellants appealed and the appeal came before Judge Juss in the First-tier. He noted the terms of the refusal and the evidence given and the submission made that the first appellant met the requirements of paragraph E-LTRP2.2 because she was the mother of a child who at the date of decision was under the age of 18 and the child had lived in Britain for seven years. He noted the Home Office Guidelines which he stated showed how seven years' continuous residence in the UK had to be interpreted and then referred to a policy document which stated:-

> "We consider that a period of seven continuous years spent in the UK as a child will generally establish a sufficient level of integration for family and private life to exist such that removal would normally not be in the best interests of the child. A period of seven years also echoes the previous policy (known as DP5/96) under which children who had accumulated seven years' continuous residence in the UK were not deported which is still referenced by the courts on occasion."

6. The judge said that that policy was binding upon the courts who had to give due weight to it and therefore on the basis that the second appellant, although he was now aged 18, had lived in Britain for seven years, the judge stated that:

> "15. The appellants accordingly satisfy the requirements of E-LTRPT2.2 because subparagraph (d) refers to a child who has 'lived in the UK continuously for at least seven years immediately preceding the date of application'. Of course, the second appellant has now reached the age of 18 years. But that is not to say the circumstances surrounding the original making of that decision are irrelevant to how this appeal has to be determined at the date of the hearing."
>
> 16. Secondly EX1 – Section EX: Exception also applies. The appellant satisfies the conditions set out in provision of FMR-LTRPT1.1(d) for a grant of leave to remain. Third, the first appellant also met the requirements for the grant of leave to remain in the UK on the basis of a private and family life as a parent with a parental relationship with a child who was under the age of 18, who has lived in the UK for seven years immediately preceding the date of the decision. For all these reasons, this appeal is allowed"

7. The Secretary of State's appeal stated that the judge, when dealing with paragraph EX1 had not dealt with subsection EX1(a)(ii) which provided to succeed it should be shown that "it would not reasonable to expect the child to leave the UK" and furthermore it was argued that the judge had not made material findings of fact as to why it would not reasonable to expect the second appellant to return to Nigeria. It was stated that the Secretary of State maintained that it was entirely reasonable for the second appellant to return to Nigeria given the circumstances that he and the first appellant had entered the UK as visitors, that they had then overstayed, and consequently neither appellant should succeed under the Immigration Rules under the parent route.

8. Permission to appeal, having been granted, the matter came before me. Miss Isherwood relied on the grounds of appeal. She argued that the letter of refusal had raised the issue of reasonableness of the appellants' returning to Nigeria and stated that the judge had not dealt with this. She referred to the provisions of LTRP2.2 which had stated:-

> "The applicant must not be in the United Kingdom in breach of immigration laws (disregarding any period of overstaying for a period of 28 days or less) unless paragraph EX1.1. applies."

9. She then referred me to paragraph EX1(cc)(ii) which states that that paragraph would apply where the applicant had a genuine and subsisting parental relationship with a child who had lived in the United Kingdom continuously for at least seven years immediately preceding the date of application and that it would not be reasonable to expect a child to leave the United Kingdom. She argued that the judge had not considered the issue of reasonableness of return to Nigeria – that had been highlighted in the letter of refusal. Moreover, with regard to the policy document which the judge had cited, it did refer to a situation where a period of seven continuous years spent in the United Kingdom as a child would "generally"

establish a sufficient level of integration for it not to be in the best interests of the child to be removed.

10. It appeared, she argued, that there had been no submissions regarding the reasonableness or otherwise of the child having to leave and there was nothing to indicate that the judge had considered that it would not be reasonable for the child to leave. She also stated that the judge had not been entitled to find that there was a private life established in the United Kingdom which would outweigh the public interest in the necessity of immigration control.

11. In reply Mr Nwaekwu started that the decision was fully reasoned and that the judge had properly applied Home Office policy which was binding upon him. He referred to the decision in **JO and Others [2014] UKUT 00517 (IAC)** and stated that that indicated that it would not be reasonable to expect the appellants to leave Britain. He argued that the Rules were Article 8 compliant and that effectively they were codifying the provisions of DP5/96 and therefore the seven year period was sufficient for the judge to find that the second appellant would be entitled to leave to remain and on that basis that his mother would also be entitled to remain. He argued that the judge had clearly taken into account the issue of reasonableness before reaching his conclusion – the judge had referred to the fact that he had taken into account all documents before him and that included the witness statements of the appellants and the documentation relating to the second appellant's studies.

12. I consider that there is a material error of law in the determination of the Immigration Judge. He has not considered the issue of the reasonableness of the second appellant's removal. The reality is that, of course, that the second appellant is now an adult but also that he and his mother would be returning to Nigeria together as a family unit – the family would not be split. Moreover, they had both entered as visitors and to allow them to remain now would ignore the importance of having effective immigration control.

13. The reality is that the judge had simply ignored the requirement that for those who have lived in Britain for more than seven years the issues of reasonableness of their removal should be considered. I am satisfied that this is an appeal in which the requirements of the Senior President's Practice Statement (paragraph 7.2(a)) are met. The appeal will therefore be remitted to be heard at Hatton Cross or one of that hearing centres satellite courts on 28 June 2015.

Decision

The appeal of the Secretary of State is allowed to the extent that the appeal is remitted to be heard in the First-tier afresh.

Signed Date 07/01/2015

Upper Tribunal Judge McGeachy