



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/38213/2014
IA/38214/2014
IA/38218/2014
IA/38221/2014

THE IMMIGRATION ACTS

Heard at Field House
On 10 August 2015

Decision Promulgated
On 1 September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

OLAYINKA RASHEEDAT AWONUGA
ABDUL HAQQ OLAMIDE AWONUGA
SAINAB AWONUGA
BAZEET OLUWASHEMILORE OLAMIPOSI AWONUGA
(ANONYMITY DIRECTIONS NOT MADE)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Clarke counsel instructed by Raffles Haig Solicitors
For the Respondent: Ms A Holmes Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant.

Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Khan promulgated on 23 January 2015 which dismissed the Appellants' appeal against a refusal of further leave to remain on all grounds and to make directions for their removal from the United Kingdom. .

Background

3. The Appellants are all citizens of Nigeria a mother whose date of birth was 20 January 1974 and her three children born on 22 January 2004, 20 November 2005 and 5 March 2013 respectively.
4. The Appellants applied for leave to remain in the United Kingdom on the basis of their family and private life.
5. On 10 September 2014 the Secretary of State refused the Appellant's application. The refusal letter in essence found that the Appellant did not meet the suitability requirements as she had an outstanding debt of over £1000 with the NHS, the parent route requirements or the private life requirements of Appendix FM including EX.1 and paragraph 276ADE. No exceptional circumstances were found to warrant a grant of leave outside the Rules.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge M A Khan ("the Judge") dismissed the appeal against the Respondent's decision. The Judge heard oral evidence from the Appellant who appeared in person. The Appellant was cross examined and the Judge made a number of findings at paragraphs 26-37 and concluded by dismissing the appeals. He found in essence:
 - (a) The first Appellant was not a credible witness.
 - (b) The 3 children would have a right to an education in Nigeria and their best interests would not be affected by being removed with their mother to Nigeria.
 - (c) S117b meant that family and private life built up during illegal or precarious stay in the United Kingdom cannot be considered.
7. Grounds of appeal were lodged arguing:
 - (a) There were a number of references in the decision to facts that bore no relation to the Appellants' appeal.
 - (b) The facts erroneously referred to appear to relate to a case involving a mother and father and two children and one of the family members was in need of medical treatment.
 - (c) The Judge failed to consider paragraph 276ADE (iv) in relation to Sainab who has lived in the United Kingdom for more than 7 years.

- (d) The Judge has misdirected himself in relation to paragraph 117B of the Nationality Immigration and Asylum Act 2002.
8. On 17 March 2015 First-tier immigration Judge Pooler gave permission to appeal on all grounds.
9. At the hearing I heard submissions from Mr Clarke on behalf of the Appellants that :
- (a) He relied on his skeleton argument that set out the three grounds that argued the Judge had made material errors of law.
 - (b) The Judge had in essence mixed up the facts of two cases. The errors were so numerous they could not be explained as typographical errors or minor confusion.
 - (c) The Appellants had a fundamental right to have the facts of their case anxiously scrutinised.
 - (d) Given the material mistakes of fact the Tribunal could not be confident that the credibility findings were made on the basis of the correct case.
 - (e) The Judges summary of s 117b at paragraph 37 was wrong in law and required a more nuanced consideration.
 - (f) The Judge had failed entirely to consider paragraph 117B (vi) in relation to the children given that the operative date for that was the date of hearing and the Judge had accepted that the family had lived in the United Kingdom since November 2007.
 - (g) The assessment at paragraph 35 of Article 8 was inadequate and there was no consideration of the family's reintegration in Nigeria.
 - (h) There was evidence from the children's school about the impact of removal and this was not apparently considered.
10. On behalf of the Respondent Ms Holmes fairly conceded that she was in some difficulty in relation to the decision and chose to say no more.

Finding on Material Error

11. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
12. I am satisfied that there is clear evidence that the Judge confused the facts of two different cases in this decision and this is evidenced in the following paragraphs of the decision :
- (a) Paragraph 7 there is reference to the Appellants being represented although they appeared in person unrepresented.
 - (b) Paragraph 10 there is reference to the oral evidence of the first and second Appellant when only the first Appellant gave oral evidence.
 - (c) Paragraph 28 refers to the Appellant having 2 children when she has 3.

- (d) Paragraph 29 there is reference to 'their children' suggesting two parent Appellants.
 - (e) Paragraph 29 there is reference to someone called Gail needing medical care . There is no one called Gail in this appeal.
 - (f) Paragraph 31 refers to removal to India when these Appellants are Nigerian.
 - (g) Paragraph 34 refers to the best interests of the 'teo children'. This case involves 3 children.
13. The failure of the First-tier Tribunal to address and determine the facts of this appeal based on an accurate factual matrix constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different.
14. I am satisfied that the Judges assessment of whether the Appellants met the requirements of the Rules or Article 8 was wholly inadequate because he failed to address and determine whether the provisions of paragraph 276 ADE(iv) or paragraph 117B(vi) applied in this case given the length of residence of the third Appellant who arrived in the UK aged 12 months and was 9 at the date of hearing. This was a material error of law.
15. I am satisfied that the Judge misdirected himself as to s 117B and the impact of unlawful or precarious status: the provision does not state that family and private life 'cannot be considered' but rather that 'little weight' should be given in those circumstances and therefore a more nuanced assessment was required than that given by the Judge.
16. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety. All matters to be redetermined afresh.
17. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:
- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
18. In this case I have determined that the case should be remitted because the Appellants did not have a fair hearing due to the fact that the Judge had manifestly confused the facts of two cases and therefore failed to make adequate findings in relation either to the Rules or Article 8. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

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IA/38214/2014
IA/38218/2014
IA/38221/2014

19. I consequently remit the matter back to the First-tier Tribunal sitting at Taylor House to be heard on a date to be fixed before any First-tier Immigration Judge other than First-tier Immigration Judge M A Khan.

Signed

Date 18.8.2015

Deputy Upper Tribunal Judge Birrell