Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/08232/2015
AA/08233/2015
AA/08234/2015

THE IMMIGRATION ACTS

Heard at Field House
On 6th January 2016

Decision & Reasons Promulgated
On 7th January 2016

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

J N O
D C O
C C P O
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr I Kumi, instructed by Rehoboth Law
For the Respondent: Ms S Sreeramen, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The Appellants are citizens of Nigeria born in 1976, 2013 and 2015 respectively. They appeal against the decision of First-tier Tribunal Judge Heatherington, dated 5th October 2015, dismissing their appeals against removal on asylum and human rights grounds.

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2. Permission to appeal was granted by First-tier Tribunal Judge Kimnell on 26th October 2015 on the following grounds:

> "The judge did not record any self-direction as regards the burden and standard of proof. That is not necessarily fatal if it can be seen from the body of the decision that the correct burden and standard was in fact applied, but it cannot be seen. On the contrary, the phrase 'I am not satisfied' in paragraph 39 may be taken as an indication that the balance of probability standard has been employed when assessing the asylum claim, rather than the attachment of such weight to various pieces of evidence as the Tribunal thinks appropriate in accordance with Degirmanci [2004] EWCA Civ 1553 and Karankaran."

3. Mr Kumi relied on the grounds of appeal and submitted that there was no proper application of the standard and burden of proof; the Judge's credibility findings were not open to him and were unreasonable; and the Judge failed to give adequate reasons for those findings. Mr Kumi agreed that the Appellant could not succeed under paragraph 276ADE if her asylum claim was not made out. He submitted the Judge had failed to consider the best interests of the children, although he accepted that it was in their best interests to remain with their mother.

4. Ms Sreeramen relied on the Rule 24 response and submitted that it was clear the Judge was aware of the appropriate test to be applied at [8] and he was mindful of all the evidence. Even though there was no direction on the burden and standard of proof the Judge was aware that the burden was on the Appellant at [39]. The reasons given at [30] were sufficient to show that the Judge had agreed with the Respondent in relation to credibility. The Judge's adverse credibility findings were not perverse and it was implicit in the nature of the findings that he had applied the correct standard of proof.

5. The Judge set out the Appellant's cross-examination at [34] and rejected the core of the Appellant's claim, her forced marriage. There was no corroborative evidence of the Appellant's forced marriage and the Appellant made no reference to it in her visa application or screening interview. The Appellant had used deception in her visa application and her application under the Immigration (EEA) Regulations 2006. The Judge had focussed on the relevant issues and had given adequate reasons for his conclusions.

6. I find that the Judge erred in law in failing to demonstrate that he had applied the correct standard of proof. There was no specific direction in the decision and he did not refer to the standard of proof in asylum cases in considering the Appellant's credibility. What is set out at [8] was insufficient to show that he had applied the correct standard of proof.

7. Further, the application of the correct standard of proof was not implicit in the Judge's findings at [30] to [39]. The Judge failed to give adequate reasons for why the Appellant's account was not credible or for why her account was implausible. He makes no reference to inconsistencies in the

Appellant's account nor does he give examples of why her account is implausible in the light of background material.

8. I have decided in accordance with paragraph 7.2 of the Practice Statements of 25th September 2012 that the decision dated 5th October 2015 should be set aside and the appeal remitted to the First-tier Tribunal.

DIRECTIONS

(i) The Tribunal is directed pursuant to section 12(3) of the Tribunals, Courts and Enforcement Act 2007 to reconsider the appeal at a hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Heatherington.

(ii) I direct that the Appellants serve on the Respondent and the Tribunal not less than 7 days before the hearing a fully paginated and indexed bundle of documents on which they intend to rely.

(iii) No interpreter is required. Time estimate two hours.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

J Frances

Signed Date 6th January 2016

Upper Tribunal Judge Frances