IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08369/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 March 2016	**On 18 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MR PETER OMOGHENE-OSIARO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Stevens, Legal Representative, Duncan Lewis Solicitors
For the Respondent: Ms S Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the appellant's appeal against a decision of First-tier Tribunal Judge Jones QC to dismiss his appeal against a decision of the respondent to refuse an application for leave to remain in the UK both on asylum grounds, humanitarian protection grounds and under the Immigration Rules.

2. The appellant was given permission to appeal by First-tier Tribunal Judge Fisher on 4 February 2016 because Judge Fisher noted a number of factual errors in the decision, including, at paragraph 48, an erroneous finding that there was a lack of evidence to support the fact that the appellant's wife's suffered from post-traumatic stress disorder when in fact there was evidence in the bundle of documents produced by the appellant (at pages 429 to 432) which showed that his wife may have suffered from post-traumatic stress disorder. Secondly the judge erroneously referred to the appellant's wife as not being a native of the UK but being a native of Nigeria when in fact, Mr Stevens has informed me, she was born in the UK and has a British passport. There was also a discrepancy between the judge's finding in relation to the appellant's wife's employment in that, at paragraph 45 of his decision, the Immigration Judge referred to the appellant's [wife] as not being in employment, whereas in fact, she was employed part-time and remains employed part-time.

3. Ms Sreeraman has defended the Immigration Judge's decision on the basis that the errors identified above were not material to the outcome of the appeal before him. The Immigration Judge made comprehensive findings against the appellant.

Discussion

4. I have considered the need for fairness to both the parties. The appellant may perceive a lack of fairness in the Immigration Judge's decision in that he may not have considered adequately all the evidence adduced on the appellant's behalf. I find a number of the errors identified were potentially material. In particular, the Immigration Judge appears not to have fully considered the evidence relating to his wife. With respect, the Immigration Judge appears to have misunderstood parts of the evidence and mistakenly found that the appellant's wife was a native of Nigeria when in fact she was British. In summary, it therefore appears that those matters raised by Judge Fisher at paragraph 3 in the grant of permission need to be looked at again. Neither party sought to adduce any further evidence under rule 15 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, I will proceed to remake the decision based on the evidence submitted to the FTT.

Conclusions

5. The appellant has a poor immigration history, coming to the UK illegally in 2008. He then made a bogus asylum claim which was dismissed on 19th May 2015. The appeal to the FTT on asylum /humanitarian protection grounds was rightly rejected by the Immigration Judge. There is no appeal against that decision. The appellant does not satisfy the requirements of the Immigration Rules either. Indeed, I do not understand it to be contended in the grounds of appeal that the Immigration Judge's decision to dismiss the appeal under the Immigration Rules was wrong.

Specifically, the appellant does not meet any of the family life provisions contained in Appendix FM or the private life provisions in paragraph 276 ADE. In any event, by virtue of section 117B of the 2002 Act, little weight was to attach to family life formed when the appellant has been here unlawfully, which appears to be the case here. However, the appellant's representatives contend that his wife's medical condition is such that this amounted to an insurmountable obstacle to the appellant and his wife relocating to Nigeria. It is claimed that the appellant's wife suffered her PTSD as a consequence of an incident at the hands of Boko Haram and this represented a significant obstacle to the appellant and his wife returning to Nigeria to continue their family life there. The appellant's wife is a British citizen who ought to be allowed to continue her family life with the appellant in the UK. Her health would be likely to deteriorate in Nigeria. Reference is also made to the appellant's health, although that does not appear to have been the subject of any identified arguable error of law in the grant of permission. The appellant suffers from insulin dependent diabetes and HIV. It is argued on the appellant's behalf that there needs to be a strong reason to justify the respondent's decision to refuse the appellant leave to remain outside the Immigration Rules and that given the family life he has undoubtedly formed here the appellant's appeal against the refusal of further leave to remain should have been allowed.

6. I am not satisfied that the appellant's or his wife's state of health render the respondent's decision to refuse the appellant leave to remain in the UK disproportionate. Ms Ikeagwu has numerous health problems but the alleged psychological component to her state of health is not straightforward. A number of medical practitioners make no reference to it and she does not appear to have undergone a proper clinical examination under a psychiatrist. The report from Sarah Stubbs does not amount to a clear diagnosis of PTSD. I note that on examination in July 2014 by an identified Dr at South London and Maudley NHS Trust (at C21 in the respondent's bundle) it was recorded that [Ms] Ikeagwu complained of intrusive thoughts. However, it was noted the following December (see C20) that no suicidal thoughts were disclosed. It does not appear from Ms Stubbs' report that the intrusive or suicidal thoughts from which Ms Ikeagwu has suffered are due to an incident with Boko Haram, there being a reference to trauma connected with "lost children". In any event there is no evidence that [Ms] Ikeagwu would not be able to receive suitable treatment in Nigeria. In so far as it is also relevant to look at the appellant's own medical condition at the date of the hearing, his condition was, sadly, not out of the ordinary and he could no doubt be treated for these common conditions in Nigeria, as the Immigration Judge indicated at paragraph 51 of his decision.

7. Although the Immigration Judge wrongly referred to the appellant as being Nigerian in origin, she has spent a great deal of her life there, having studied in Nigeria and obtained qualifications at university. In addition, she married the appellant there. It is not a country with which she has no

connections. She has relatives in a wide variety of locations and the appellant has a number of relatives there.

8. There appear to be strong public interest grounds (now set out in the amendments to the Nationality, Immigration and Asylum Act 2002 introduced by the Immigration Act 2014) why the appellant ought to be required to return to Nigeria and, if desired, continue his family life with Ms Ikeagwu away from the UK. In particular, by virtue of section 117 B (3) little weight is to attach to a relationship with a qualifying partner formed at a time when the appellant was in the UK unlawfully.

9. I have considered all the evidence which might have a bearing on the assessment under article 8, including the evidence which the Immigration Judge failed to have proper regard to. Having carefully considered all the evidence, I have come to the same conclusion that the Immigration Judge came to. Even if the Immigration Rules do not fully address the issues in this appeal and the case is considered outside those rules, I have concluded that the respondent carried out a full assessment and there were no exceptional or compelling circumstances why the appellant's case should be considered outside those rules. It was correct of the respondent to conclude that [Ms] Ikeagwu could reasonably be expected to return to Nigeria with the appellant and continue their family life there or for the appellant to make an appropriate application under the Immigration Rules.

Notice of Decision

10. Having found a material error of law in the decision it was necessary to set as side that decision. I have decided to re-make the decision which is to dismiss the appeal against the respondent's refusal of leave to remain in the UK under the ECHR.

    The appeal against the respondent's decision to refuse leave to remain is dismissed on all other grounds

Anonymity

The FTT made no anonymity direction and I make no such direction either.

Signed Date

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date

Deputy Upper Tribunal Judge Hanbury