



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/10367/2016
HU/10368/2016, HU/10370/2016

THE IMMIGRATION ACTS

Field House
On 5 June 2018

Decision & Reasons Promulgated
On 15th August 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MISS F O
MISS O O
MRS M O
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr E Fripp, Counsel, instructed by VIP Legal
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. Following a hearing featuring the aforementioned representatives which took place in Field House on 24 May 2018 I sent a decision setting aside for error of law the decision made by Judge Bennett of the First tier Tribunal (FtT) on 19 October 2017 dismissing the appeals of the three appellants against the decisions made by the respondent to refuse them leave

to remain in the UK. The third appellant is the mother of the first two appellants, who were born in April 1990 and June 1998 respectively. Having noted that at the date of application (14 January 2016) the second appellant was under 18 and had resided in the UK for seven years, I ruled that she was entitled therefore to have her case under the Rules approached in light of the guidance given by the Court of Appeal in **MA (Pakistan)** [2016] EWCA Civ 705. Turning to the task of re-making the decisions, I stated at para 10 that:

“I have concluded the case should be retained in the Upper Tribunal and that the findings of fact as to the appellants’ circumstances shall stand. However, I am concerned that there is one important matter on which I lack up-to-date evidence. The FtT Judge accepted that the second appellant had had “real problems with her mental health” (paragraph 60) but went on in the same paragraph to say that he could not be satisfied “that she is currently suffering from any problems or about the extent of any such problems or about the extent of the problems which she would suffer if she were removed”. That assessment followed an analysis of the mental health evidence, the most recent being from an Elizabeth Elliott regarding psychotherapy sessions between August 2016 and June 2017. That is nearly one year ago. In order to re-make the decision I consider it necessary to receive updated evidence regarding the second appellant’s mental health.”

2. I then issued the following direction at para 11:

“DIRECTION

11. Accordingly, I direct that within six weeks of this decision being sent, the appellants’ representatives obtain and produce to the Upper Tribunal (marked ‘FAO Judge Storey’) with a copy to the respondent a short update report on the second appellant’s mental health. On receipt of this report I will wait a further two weeks to allow time for the respondent to make any response and then decide whether I can proceed to re-make the decision without further ado or alternatively list it for a further hearing.”

3. Subsequently the Upper Tribunal was sent a short medical report from a Dr Roy, a Consultant Psychiatrist at Oxleas NHS, dated 26 June 2018 stating that Ms OO (the second appellant) is under the care and treatment of the Oxleas NHC Foundation Trust and that “she suffers from complex and severe mental health problems including Depression, Suicidality and post-traumatic stress”; that “she is receiving treatment for her mental illness”; and that this “includes medication...and referrals for psychological therapy”. In the opinion of Dr Roy, “[h]er mental (and physical health) are at high risk of further deterioration if she were to return to her home country”. The doctor went on to report what the second appellant had said to him about receiving death threats on return to Nigeria.

4. In accordance with my Directions, no further action on the case was taken for a further two weeks to allow time for the respondent to make any response. None has been forthcoming – and it is now well past the relevant deadline.

5. Having reviewed the state of the evidence, I am satisfied I can proceed, as forewarned to re-make the decision without further ado rather than list it for a further hearing.

Re-making the decision on the three appeals before me

6. This is a case where there is no dispute about the factual matrix relating to the three appellants as found by Judge Bennett save for one matter to which I shall come to in a moment. The appellants' grounds before the FtT did not take issue with any of Judge Bennett's findings of fact. Nor, once I set aside the decision of Judge Bennett for material error of law, have the appellants sought to make any further submissions suggesting that there has been a change in their factual circumstances found by Judge Bennett. There is, however, one issue which was in dispute. Mr Bramble for the respondent had submitted before me that on the basis of Judge Bennett's findings, the second appellant was no longer suffering from mental health problems. Whilst accepting that the second appellant still had "real problems with her mental health" Judge Bennett did not consider she was currently suffering from such problems. On the basis of the further medical report which has now been furnished in response to my directions, I am satisfied that the second appellant is indeed suffering from mental health problems currently (However, I note that the statement by Dr Roy regarding the second appellant's mention of receiving death threats simply records what she has told him; there was no evidential basis before the judge for considering this had any objective foundation).

7. In light of the modified factual matrix I turn to consider first of all the historic question of whether the second appellant was entitled to succeed in her appeal on the basis that it would be unreasonable to expect her to return to Nigeria when she was a minor at the date of decision by the respondent. As already noted, I am satisfied that I can take as a starting point the findings of Judge Bennett. In respect of the second appellant these include that the second appellant had "established strong ties here independently of her family, including her ties with her church and her friends"; and that she only has memories of Nigeria from childhood; that she will probably have no close family there; and that she will face at problems coming to terms with returning to Nigeria. These considerations would not suffice to establish that her return would be unreasonable if I applied the approach taken by Judge Bennett of requiring her to show strong reasons why she should be able to stay. However, as clarified in my error of law decision, the guidance in **MA(Pakistan)** requires that I look at matters the other way around and ask whether strong reasons have been shown why she should not be allowed to stay. I am not persuaded that the evidence demonstrates such strong reasons. In addition to the abovementioned facts considered by the Judge Bennett when he heard the case in September 2017 (and decided she was not currently experiencing mental health problems) I have evidence from a Consultant Psychiatrist, unchallenged by the respondent, stating that she does currently suffer from mental health problems. So, there is now a further factor in her favour not present when Judge Bennet decided her appeal.

8. In light of the above, I conclude that it would not be reasonable to expect the second appellant to leave the UK and accordingly she is entitled to succeed in her human rights appeal on the basis that:

- (i) at the date of decision, she met the requirements of para 276ADE(iv) of the Immigration Rules and there was therefore no public interest at that stage in refusing her application for leave to remain;

- (ii) whilst she has since become a young adult and therefore could not, if the same rules were applied to her today, stand to benefit from para 276ADE (1)(iv), I am not persuaded that when assessing her Article 8 circumstances outside the Rules I can put aside the evidence that strong reasons then existed for allowing her to remain. Even though at the date of hearing before Judge Bennett she was not experiencing mental health problems, she had a well-documented history of mental health problems and it was reasonably foreseeable on the basis of the medical reports before the judge that they would remain a feature of her general physical and mental health for some time;
- (iii) at the time of my assessment (in the context of re-making the decision on the appeal) the second appellant suffers from mental health problems, which are in addition to long-standing physical health problems.

9. In my judgement, bearing in mind the findings of fact already made about the second appellant's likely circumstances in Nigeria and the fact that she has established strong ties in the UK independently of her family, including her ties with church and her friends, the above constitute compelling circumstances.

10. In light of the above finding I turn to consider the circumstances of the first and third appellants.

11. As regards the third appellant, the mother, just as the second appellant should have benefited from paragraph 276ADE(1)(iv) at the date of decision, so should the third appellant have stood to benefit under s.117B (6) of the NIAA 2002. Whilst the second appellant's circumstances have now changed as described above (and so the third appellant cannot now come within s.117B(6), I am satisfied in the context of the wider proportionality assessment outside the Rules that they are such as to require the third appellant to continue to play a strong parental role notwithstanding the second appellant is now a young adult seeking to embark on further education. The second appellant remains her dependant. There are compelling reasons for allowing her to stay to continue to be actively involved in the life of the second appellant.

12. In relation to the first appellant, she too remains living at home as a dependant of the third appellant. It was a finding of fact made by Judge Bennett that she enjoys family life with her mother and sister (para 41); and as I have already noted, I take Judge Bennet's findings of fact as my starting-point. If she is removed, but her mother and sister are allowed to remain, she will be separated from them and there will be an interference in her right to respect for family life. However, to succeed in her appeal she must either establish she is entitled to succeed under the Immigration Rules (because then there would be no public interest in her removal) or establish that in the context of the wider proportionality assessment there are compelling circumstances outside the Rules warranting that she too be allowed to remain.

13. Whilst the first appellant clearly has accepted family life with the second appellant and her mother, she is now 28 years of age and she has clearly established an independent set of social ties as evidenced for example by the valuable work she does as a bereavement counsellor. She does not suffer any significant physical or mental health problems. Unlike the second appellant, she did not stand, at the date when the respondent made her decision,

to benefit from the provision of paragraph 276ADE(1)(iv) as she was already over 18. Like the second appellant, she is likely to face, if she has to return to Nigeria, difficulties in reintegrating there, as she has now been away from that country for over 10 years. However, the evidence does not establish that she would face very significant obstacles there (as required by para 276ADE(1)(vi)). On the basis of the findings of Judge Bennett, which have not been challenged by Mr Fripp, she has some family relatives there. So far as the requirements of the Rules are concerned, therefore, there has never been a time when the public interest considerations weighing against her should have had no effect and that remains the case today. Put shortly, she cannot succeed under the Immigration Rules. Turning to consider her circumstances outside the Rules, her inability to meet the requirements of the Rules is a significant factor when assessing the public interest considerations in play in her case. She speaks English but she is not financially independent. Her private life ties were formed at a time when her immigration status was precarious. As already noted she has no significant physical or mental health problems. She has family life ties with her mother and sister and they weigh in her favour but her circumstances overall do not disclose the same compelling reasons that I have found to obtain in relation to her sister. Accordingly, I dismiss her human rights appeal.

14. To conclude:

I have already set said the decision of Judge Bennett for material error of law.

The decision I re-make in respect of the first and third appellants is to allow their human rights appeals.


The decision I re-make in respect of the first appellant is to dismiss her human rights appeal.

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 5 June 2018



Dr H H Storey
Judge of the Upper Tribunal