Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/21301/2015
IA/22655/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7th December 2017	**On 18th January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

REMI [R] (FIRST APPELLANT)
[P R] (SECOND APPELLANT)
(NO ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms C Jaquiss, instructed by Farani-Javid-Taylor Solicitors LLP
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Nigeria and are a mother and daughter. They appealed to the First-tier Tribunal against a decision made by the Secretary of State on 22nd May 2015 to refuse their application for leave to remain based on their private and family life in the United Kingdom. First-tier Tribunal Judge Fletcher-Hill dismissed the appeal in a decision made

on 20th December 2016. The Appellants now appeal with permission granted on 4th August 2017.

2. The background to this appeal is that the first Appellant claims that she entered the UK in March 2002 and has had no leave to remain since then. Her daughter was born in the UK on [ ] 2008. The Appellant applied for leave to remain on 26th March 2015. The Secretary of State refused the application on 22nd May 2015 on the basis that she was not satisfied that the Appellants met the requirements of Appendix FM or paragraph 276ADE of the Immigration Rules nor would the decision to remove them be disproportionate under Article 8 of the ECHR.

3. The First-tier Tribunal Judge found that there was evidence that the first Appellant was in the UK in 2002 and that there is no evidence that her status has been anything other than illegal. The judge noted that the child's father is a Belgian citizen who is exercising treaty rights and living and working in Scotland but there was no evidence in relation to him and no evidence that he was settled in the UK. The judge also noted that the majority of contact with the second Appellant's father is by telephone. The judge assessed the evidence and considered the best interests of the child at paragraph 56. The judge concluded that the Secretary of State's decision was proportionate and dismissed the appeal.

4. The Grounds of Appeal to the Upper Tribunal contend that the judge failed to consider all of the evidence. It is contended that the judge failed to properly consider paragraph 276ADE of the Immigration Rules and the case of **PD and Others (Article 8 – conjoined family claims) Sri Lanka [2016] UKUT 108 (IAC)** in the context of the fact that at the time of the decision the second Appellant was 8 years of age and had spent her entire life in the UK. It was submitted that the judge failed to consider whether it was reasonable to expect the second Appellant to leave the UK in accordance with paragraph 276ADE and Section 117B(6) of the Nationality, Immigration and Asylum Act 2002. It is contended that the tests in paragraph 276ADE(1)(iv) and Section 117B(6) are similar and that the judge failed to properly assess whether it would be reasonable to expect the child to leave the UK.

5. When the appeal first came before me in October 2017 Ms Jaquiss' application for an adjournment was granted to enable her to seek further evidence in relation to the status of the second Appellant's father in light of the First-tier Tribunal Judge's finding that the father is a Belgian national exercising treaty rights in the UK. At that stage she submitted that if the father is settled in the UK then the child will be entitled to British citizenship. Given that evidence relating to this matter could change the entire basis of the appeal and might in fact indicate that the Tribunal did not have jurisdiction to determine the second Appellant's appeal, I granted an adjournment.

6. At the resumed hearing Ms Jaquiss advised that the second Appellant's father was not co-operating and in these circumstances she could not take

any further the submission that the child had an entitlement to British citizenship.

7. In Ms Jaquiss's submission the judge failed to apply the test set out in paragraph 276ADE and considered in the cases of **MA (Pakistan) [2016] EWCA Civ 705** and **PD** as to whether it was reasonable to expect the child to leave the UK. In her submission, in considering the issues in relation to the child the judge imposed too high a threshold in considering reasonableness. She relied on the guidance in paragraph 46 of the case of **MA (Pakistan)**. She submitted that, although the judge referred to paragraph 276ADE(iv) at paragraph 59, she failed to engage with it properly. She pointed out that, instead of engaging with the Rules, the judge said at paragraph 59 that the child was not able to satisfy other aspects of the Immigration Rules without specifying which aspects of the Rules were being referred to. She referred also to the finding at paragraph 56 where the judge said that the child would not "face adaptation problems of any magnitude" in Nigeria and at paragraph 57 where the judge said that there was no suggestion from any independent source "that the removal of the child to Nigeria would be harmful to her and should be opposed". In her submission the use of the words 'magnitude' and 'harmful' indicated that the First-tier Tribunal Judge was applying too high of standard in assessing reasonableness. In her submission this error infected the judge's consideration of proportionality. She accepted that the Tribunal was bound to take into account the mother's status but in her submission this did not negate the need for powerful reasons to consider it reasonable to expect the child to leave the UK. Ms Jaquiss accepted that the judge had made a finding that the second Appellant's father was Belgian and was exercising treaty rights in the UK [52] on the basis of the first Appellant's oral evidence. However she submitted that having made that finding the judge should have attached weight to this factor. In her submission the deficiencies in the judge's reasoning affected the decision as a whole.

8. In response Mr Tarlow submitted that this challenge is a disagreement with the valid reasoned findings made by the judge. He pointed out that the judge considered the best interests of the child at paragraph 56 and considered a number of factors including the fact that the child could adapt to life in Nigeria, that the child has a wide family circle in Nigeria, that the child would be able to make visits to the UK and could reintegrate in Nigeria. In his submission the conclusions reached by the judge in these paragraphs and at paragraph 59 were open to the judge. In his submission the determination as a whole is sound and can stand.

9. In response Ms Jaquiss referred to **MA(Pakistan)** and contended that the judge had not adopted the approach set out in that case.

Error of Law

10. In my view the judge made no material error of law in her approach to this appeal. As accepted by the Secretary of State in the Rule 24 response the

First-tier Tribunal Judge could have set out her findings differently. I accept that it would have been preferable had the judge firstly considered the Immigration Rules before going on to consider Article 8 outside of the Rules in accordance with the guidance in **PD and Others**.

11. However, despite failing to do so, the judge did not make a material error. This is because it is clear from paragraphs 5 to 30 that the judge was aware of the reasons why the Secretary of State had refused the application and of the consideration of the Rules in that decision.

12. The issue to be determined in terms of paragraph 276ADE(iv) and Section 117B(1) (6) is whether, in circumstances where the child has resided in the UK for longer than seven years, it is reasonable to expect the child to leave the United Kingdom. Although the judge does not separately consider that issue under that heading, it is clear that the evidence considered and the findings made directly consider that issue. For example the judge considered the second Appellant's relationship with her father noting that any contact was by telephone or by way of birthday cards and financial support [51]. The judge considered the circumstances upon return to Nigeria including the fact that the child would be returned with her mother and would have a wider family circle in Nigeria and family and friends [56]. The judge considered the general circumstances in Nigeria including healthcare, education and other services availability [57]. The judge considered the ability of the child to visit the UK. The judge considered the child's Nigerian heritage and family links. The judge also considered that the first Appellant would be able to work in Nigeria and that would be beneficial to the second Appellant as she would be in a more secure economic position. In considering these matters there is nothing to indicate that the judge failed to consider any other matter in assessing whether it would be reasonable to expect the child to leave the UK. There is no submission that any factor was left out of this assessment. In these circumstances in my view it is clear that the judge did in fact consider the issue as to whether it was reasonable to expect the second Appellant to leave the UK and reached conclusions open to her on that evidence.

13. In my view the judge considered all the relevant evidence in terms of factors in the UK and in Nigeria relevant to determining the issue of reasonableness.

14. There is no separate ground going to challenge the findings in relation to the first Appellant except in terms of her relationship with the child. In light of the judge's findings in relation to the child I find that there is no sustainable challenge in relation to the findings as to the mother.

15. Considering all of these matters in my view the judge made no material error of law.

Notice of Decision

There is no material error in the decision of the First-tier Tribunal.

The decision of the First-tier Tribunal shall stand.

No anonymity direction is made.

Signed Date: 16th January 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed and therefore there can be no fee award.

Signed Date: 16th January 2018

Deputy Upper Tribunal Judge Grimes