



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/34573/2015  
IA/34574/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 9 April 2018  
Prepared 10 April 2018

Decision & Reasons Promulgated  
On 24 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

OMOLUA [L] (FIRST APPELLANT)  
[N U] (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr G Franco, counsel, instructed by Brightway Immigration & Asylum

For the Respondent: Ms J Isherwood, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellants, nationals of Nigeria, dates of birth 6 August 1969 and 15 March 2005 respectively. The first Appellant is the mother of the second Appellant who appealed against the Respondent's decision, dated 21 November 2005, to refuse leave to remain

by reference to the Immigration Rules and Article 8, ECHR. Their appeals came before First-tier Tribunal Judge Quinn, on 28 February 2017, who dismissed their appeals on 21 March 2017. On 30 January 2018 I decided that the Original Tribunal's decision could not stand because the Judge had failed to address the issue of the reasonableness of the second Appellant being required to leave the United Kingdom with the first Appellant bearing in mind he had been in the UK since he entered the UK with his mother who was on a visit visa on 17 August 2006. The second Appellant has therefore been in the United Kingdom in excess of seven years and had never left.

2. At the time the second Appellant arrived he was some 18 months of age and he is now some 12 years, 3 months old. The Judge in originally addressing this matter I found had failed to address the right question, namely whether it was reasonable to expect the second Appellant to leave the United Kingdom.
3. The further evidence submitted in support of the resumed hearing did not particularly take this matter much further forward save to highlight some of the history of the Appellants' lives in the UK, not least associated with the domestic violence directed at both Appellants, recited in the Croydon assessment made under the provisions for child protection. Ultimately a decision by a Family Court at Croydon dismissing access claims made by the second Appellant's father, the husband of the first Appellant.
4. The evidence of the Appellants' witness statements was contained within the papers in which the first Appellant identified not only them as victims of domestic violence but also the adverse effects it had upon the second Appellant. So far as I am aware there has been no contact between the second Appellant's father, [TU], and him for a number of years. There is nothing to suggest that the second Appellant or first Appellant wished to re-establish any contact with him which has desisted since about September 2015.

5. The first Appellant essentially pressed the case why it is not reasonable for the second Appellant to leave, rather than putting forward any of her individual circumstances.
  
6. She makes a number of points which I set out in no particular order:-
  - (1) First, the second Appellant has been for most of his life in the UK and having entered as a baby of a young child aged about 16/18 months he has no recollection whatsoever of Nigeria.
  
  - (2) Secondly, the second Appellant has not been brought up to understand the society and culture in Nigeria.
  
  - (3) Thirdly, the second Appellant's connections are all with the United Kingdom where his home, his friends and such family as remains are.
  
  - (4) Fourthly, the second Appellant is doing well in school and there was a period when he was treated as a gifted and talented pupil in 2016 but I have no information as to whether or not he remains in any particular class or stream devoted to being gifted and talented.
  
  - (5) Fifthly, the second Appellant was the victim of an abusive relationship from his father and has no contact with him.
  
  - (6) Sixthly, they do not have accommodation and the circumstances in Nigeria were bound to be difficult, whether or not they would be destitute there is no doubt that the Appellants would be living in poorer conditions than currently faced. It is supposed that they would fall into a situation of destitution.
  
  - (7) Seventh, the first Appellant, who has had some measure of employment through her church in providing event management and/or cake making, really has no

particular financial circumstances to support her on a return to Nigeria which would impact on the wellbeing of the second Appellant.

- (8) Eighth, the second Appellant's success in his schooling goes beyond, to his sporting activities and the role he plays in the local church where he is a children's leader.
- (9) Ninth, the first Appellant said she cannot guarantee the second Appellant's safety if they were returned to Nigeria because of risk from his father.

- 7. At the material time from August 2015 of the Respondent's decision there was public IDIs entitled 'family life and private life: ten year routes', in which it expressly stated that once the seven years' residence requirement is satisfied there need to be strong reasons for refusing leave. I was provided by the February 2018 version which I was told was in substantially the same terms. It would be somewhat surprising if it were not bearing in mind the provisions of Section 117B(6) in IAA 2002 as amended.
- 8. That guidance illustrated a number of considerations that might bear on the question of whether it is reasonable to expect the child to leave the United Kingdom. I have regard to them quite simply because it provided the number of current considerations which would bear both on Article 8, ECHR but also the applicability of the considerations which I have to take into account. Amongst those are whether the child would be leaving the UK with their parents; the extent of wider family ties in the UK; whether the child is likely to integrate readily into life in another country; whether the child or parents have visited or lived in the country before, whether there are family and social ties with that country, Nigeria; whether their parents and child have cultural ties; a level of understanding of cultural norms, time spent in diaspora in the UK giving awareness of the cultures of Nigeria and whether the parents and children can speak, read or write in a language of Nigeria, whether the child has attended school in Nigeria.

9. The guidance notes that a requirement that a non-British citizen child has lived in the UK for a continuous period of at least seven years immediately preceding the date of application recognises that over time children have started to put roots down to integrate into life in the UK, to that extent it may be unreasonable to require the child to leave. Significant weight will be given to such period of continuous residence the longer the child has resided in the UK and the older the child the more the balance will begin to shift towards it being unreasonable to expect the child to leave the UK and strong reasons will require to justify that outcome.
  
10. In this case the Respondent principally relied upon is the first Appellant's immigration history. She entered on a visit visa and simply overstayed. In addition the Secretary of State's view was that quite simply all rights can be exercised in Nigeria, the Appellants as a family unit can return and make a life for themselves in Nigeria. In considering this matter I apply the case law of *Agyarko* [2017] UKSC 11, *MA Pakistan* [2016] EWCA Civ 2705 and *AM Pakistan* [2017] EWCA Civ 180 and *MT and ET* [2018] UKUT 190.
  
11. The Respondent produced a bundle of various cases ranging over 2015 and earlier and particularly referring to *Kaur* [2017] UKUT 0014. I necessarily take into account in the light of *AM Pakistan* [2017] EWCA Civ 180 the conduct of the first Appellant's immigration history and its relevance to the reasonableness of the second Appellant being required to leave the UK. The case law has a number of threads running through it which are not entirely easy to analyse and reconcile. I prefer the approach identified in *Agyarko* and *MA Pakistan*, together with *AM Pakistan* as showing that in the light of immigration history if it is unreasonable to expect the second Appellant to leave the United Kingdom then Section 117B(6), NIAA 2002 is a self-contained provision. If it is not reasonable for the second Appellant to leave then quite simply that is the end of the matter. The public interests could not require removal and therefore the decision would not be proportionate.

12. In this case I find that the Appellants' immigration history is poor, plainly deliberate and she has taken advantage of the UK's services at least to the benefit of the second Appellant. Set against that consideration to which I give significant weight is the stance of the published policy of the Secretary of State back at the time of decision and since. There need to be powerful reasons why the benefits intended from achieving seven continuous years or more are a recognition of just how disruptive it could be for a teenager to be uprooted to a place where not only he does not speak the language, read it or write it but would be removed from all that he has effectively known in terms of his childhood and its development and his roots. After such a period of time nearly some twelve years it seemed to me that the impact of removal was not reasonable in terms of its effect upon him. The child's best interests lie in remaining in the United Kingdom, but putting that to one side as a primary consideration, focusing on the reasonableness test alone, I conclude that it is not reasonable for the second Appellant to be expected to leave the United Kingdom. I find this is a fact specific decision driven by the circumstances of the second Appellant in particular but not exclusively and that the poor immigration history of the Appellant is not something in which the second Appellant has had any part to play.
13. I find that the nature and extent of the second Appellant's links to the United Kingdom are significant and that he has effectively other than by birth none with Nigeria.
14. Ms Isherwood had the opportunity to cross-examine to these issues and essentially did not make any representations in the light of such evidence as there was to the effect that the child's personal circumstances were in effect uninvolved in the mother's determination to remain in the United Kingdom. For these reasons therefore I conclude it is not reasonable to expect him to leave with her and it follows it is not in the public interest or proportionate. If I was wrong in that conclusion I find Article 8, ECHR are engaged. In the light of the case of *Razgar* [2004] UKHL. I find that the second Appellant has a private life in the UK and a family life with his mother, the first Appellant. I find for the reasons given the Respondent's decision a significant interference. The Respondent's decision was lawful and served Article 8(2) purposes.

I find the second Appellant's circumstances show that the impact of separation for the first Appellant is disproportionate. In doing so I have applied Section 117A and Section 117B NIAA 2002. The first Appellant has reasonable English and can work. By herself there is no merit in the first Appellant's case but as the carer of a British national child settled in the UK it follows that separation from the second Appellant would be disproportionate and not in the public interest.

**NOTICE OF DECISION**

The appeals are allowed on human rights grounds.

No anonymity direction is made.

Signed

Date 25 June 2018

Deputy Upper Tribunal Judge Davey

**TO THE RESPONDENT**

**FEE AWARD**

As I have allowed the appeal, on the basis of information not before the Respondent, I have considered making a fee award but decided to make no fee award.

Signed

Date 25 June 2018

Deputy Upper Tribunal Judge Davey

P.S. I regret promulgation has been delayed through the case file being mislocated