



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/06880/2015

THE IMMIGRATION ACTS

Heard at Field House
On 2 November 2017

Decision & Reasons Promulgated
On 29 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

MISS FOLASHADE OLABISI ADEKOLA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ezeoke, Natado Solicitors, London

For the Respondent: Miss Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 14 April 1989. She appealed against the respondent's decision dated 30 July 2015 refusing her application for leave to remain in the United Kingdom on human rights grounds. Her appeal was heard by Judge of the First-Tier Tribunal Traynor on 4 October 2016. The appeal was dismissed under the Immigration Rules and under Article 8 of ECHR in a decision promulgated on 14 November 2016.

2. An application for permission to appeal was lodged and permission was refused by the First-Tier Tribunal. An application for permission to appeal was lodged with the Upper Tribunal and permission was granted by Upper Tribunal Judge Bruce on 8 September 2017. The permission states that a material part of the Tribunal's reasoning was its finding that the appellant is likely to still have a paternal grandmother living in Nigeria. It states that it is arguable that making that finding the Tribunal failed to take into account a material fact, namely the significant passage of time.
3. A Rule 24 response was lodged which states that the decision is well reasoned, all the evidence was considered by the Judge and he has given adequate reasons for his findings. It states that the grounds are just a disagreement with his findings. The response goes on to state that the appellant cannot succeed under the Rules as she came to the United Kingdom 13 years ago and not 20 years ago. It states that the appellant is intelligent and with the assistance of her relatives, who still live in Nigeria, there is no reason why she cannot get a job and look after herself and her child. Her mother and brother can financially assist her from the United Kingdom until she can support herself, and the Home Office will assist by providing her with £1,500. The response states that neither the appellant nor her mother were found to be reliable witnesses.

The Hearing

4. The appellant's representative made his submissions referring to paragraph 71 of the decision in which the Judge states that he is treating with caution the appellant's claim to have no relatives remaining in Nigeria. I was then referred to paragraph 56 of the decision in which it is stated that the appellant lived with her father and step-mother and her siblings in Nigeria, along with her paternal grandmother. At paragraph 57 it is stated that her paternal grandmother is now deceased. She died after the appellant came to the United Kingdom in 2002. The representative submitted that even if the Judge had found that her grandmother was still alive she would now be too old to support the appellant if she returned to Nigeria. All her siblings are now in the United Kingdom.
5. He referred to Section 55 of the Borders, Citizenship and Immigration Act 2009 and the best interests of the child. The Judge has referred to there being education available in Nigeria but he submitted that the Judge did not consider the appellant's risk on return and the fact that she would have no accommodation there. He submitted that the Judge did not consider that the appellant and her child are likely to be destitute if they go back to Nigeria.
6. The representative then went on to deal with paragraph 276ADE. This is not referred to in the grounds but he submitted that it would be difficult for this appellant to integrate on return to Nigeria as she is returning with a child and has not been there since she was 15 years old. He submitted that the Judge has not taken into account

the fact that on return she will have to relocate with a child (now two children). He submitted that this issue is obvious and should be considered. I was referred to paragraph 79 of the decision which refers to Sections 117A and B of the 2002 Act and public interest. He submitted that when the appellant came to the United Kingdom she was only 15 years old and she has always considered herself to be British as she had no knowledge of the immigration system in the United Kingdom. He submitted that her age on arrival has to be taken into account and when the Judge refers to her precarious status he has not properly considered the fact that the appellant was very young when she arrived.

7. The Presenting Officer made her submissions referring to the grant of permission. She submitted that the grant of permission is based on the appellant probably having a paternal grandmother still living in Nigeria and she submitted that at no time did the Judge find this. At paragraph 71 the Judge refers to "no relatives remaining in Nigeria". The Judge refers to the appellant's mother, who was a witness at that hearing. Her mother told the Tribunal that when the appellant was not at school she lived with her paternal grandmother. The Judge then states that the paternal grandmother is now deceased. The appellant was told this by an unidentified acquaintance from Nigeria, who she met by chance in Woolwich in 2010. She submitted that the representative states that the inconsistency referred to by the Judge at paragraph 72 is an error of law but it does not go to the core of the claim. The Judge found the appellant's evidence and her mother's evidence to be unreliable. She submitted that the Judge does not believe that the appellant has no relatives remaining in Nigeria. The evidence before the Judge was not consistent. There were credibility issues in the appellant's claim.
8. The grounds of application state that the Judge did not give proper regard to Section 55 of the Borders, Citizenship and Immigration Act 2009 but she submitted that he did. At paragraph 64 the Judge refers to the best interests of the child being a primary consideration. The Judge considers the age of the child and at paragraph 68 refers to the child being dependent on her mother. At paragraph 74 the Judge states that the child can have a private life in Nigeria and she is young enough to adapt to that. At paragraph 81 the child is again referred to and the Presenting Officer submitted that this is a very thorough decision, has been written extremely carefully and all the aspects of this claim have been properly considered by the Judge.
9. The Presenting Officer submitted that the appellant has said that the child cannot go to Nigeria as it would not be safe there, but she submitted that it is clear that this child has no basis of stay in the United Kingdom and neither does her mother. The grounds refer to significant obstacles to the appellant and her child integrating in Nigeria but she submitted that the appellant is 27 years old and does not require other people to depend on. She is well educated and she may well have relatives in Nigeria. She lived there until she was 15 years old. She started her education there and at paragraph 41 of the decision the Judge finds that the appellant can get work in Nigeria and there is free education for her son. The appellant has stated that there are no health issues affecting either her or her son.

10. I was referred to paragraph 78 of the decision which starts “Even if I am wrong in the above respect (being the appellant’s family life for the purposes of Article 8 and the fact that she lives with her mother) whatever support she is receiving from her mother and perhaps her other siblings in the UK can be maintained upon her return to Nigeria.”
11. The Presenting Officer submitted that the Judge has considered everything in his decision. It was open to him to make the findings he did and he has explained how he reached these findings. She submitted that the fact that the appellant and her mother were found not to be credible must go against the claim and she submitted that the Judge has made it clear why he finds the appellant and her child can return to Nigeria and there will be no breach of the Immigration Rules or Article 8 of ECHR.
12. She submitted that there is no error of law in the Judge’s decision.
13. The appellant’s representative referred me to paragraph 72 of the decision and the inconsistency referred to therein. This inconsistency relates to the different evidence given by the appellant and her mother about where the appellant lived in Nigeria and who with. The representative stated that this does not go to the core of the claim and in any case if I considered paragraph 43 and paragraphs 56 to 58 there is no inconsistency. He submitted that it is because the Judge found there to be an inconsistency that he believes that the appellant may have relatives in Nigeria but he submitted that that is not the case, based on the appellant’s and her mother’s evidence. He submitted that if there is no inconsistency then the Judge’s decision must be flawed.
14. With regard to Section 55 and the paragraphs in which the Judge refers to this, he submitted that the Judge has not considered that there will be no family apart from the appellant for the child when she returns to Nigeria. I was referred to the appellant’s statement in the original bundle and he submitted that the appellant will be returning with a child and without a job. This is referred to at paragraph 6 of her statement and he submitted again that the Judge has not properly considered what will happen to the appellant and her child if they have to go back to Nigeria to face the likelihood of destitution and the problems of integration.
15. I was asked to find that there are material errors of law in the decision.

Decision and Reasons

16. The Presenting Officer is correct when she states that the Judge at no time stated that the appellant likely had a paternal grandmother still living in Nigeria. Because the Judge found the appellant’s and her mother’s evidence to be unreliable, the Judge does not believe that the appellant has no relatives in Nigeria. The Judge has referred to an inconsistency in the evidence given by the appellant and the evidence given by her mother. This is a fact. At paragraph 58 the Judge finds that the

appellant has deliberately been prevaricating. He states that although the appellant now states that her paternal grandmother died after she came to the United Kingdom, at paragraph 43 the Judge notes that in her oral evidence the appellant states that her paternal grandmother died before she came to the United Kingdom. The appellant's and her mother's evidence is contradictory and confusing.

17. At paragraph 72 the judge refers to the appellant's representative suggesting that the inconsistency does not go to the core of the claim, but the Judge explains that on a fundamental issue such as what relatives the appellant may have in Nigeria. There is evidence which contradicts the appellant's claim that there are no such relatives. The judge finds that on the balance of probabilities neither the appellant nor her mother is a reliable witness. He has not received a consistent account from them and because of this is not prepared to give the appellant the benefit of the doubt.
18. The Judge has clearly considered the appellant's position on return to Nigeria finding that she was there until she was 15, and that she is an educated adult who will be able to find work on return. The appellant has stated that her son is too young to go to Nigeria with her because she faces uncertainty but the Judge has considered Section 55 and the best interests of the child, which are to be with his mother who has no right to be in the UK. The appellant states that she will be unable to integrate in Nigeria but she was there for 15 years and much of her education took place there.
19. The Judge's decision is thorough and all the aspects of the claim have been properly considered by him. He does not find the appellant and her mother to be reliable witnesses and has pointed out that the appellant has been aware for a considerable time that she has no status in the United Kingdom and has done nothing about it. Based on the submissions before me today I find there is no material error of law in the Judge's decision.

Notice of Decision

There is no material error of law in the Judge's decision promulgated on 14 November 2016 and this decision must stand.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Murray