Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/14443/2017
HU/14446/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 December 2018	**On 15 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

(1) GRACE [M]
(2) EBENEZER [B]
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr B Adekoya, Legal Representative, Atlantic Solicitors
For the Respondent: Mr David Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal from the decision of the First-tier Tribunal (Judge E.M.M. Smith sitting at Priory Court, Birmingham, on 6 June 2018) dismissing their appeals against the decision of the respondent made on 27 October 2017 to refuse to grant them leave to remain on human rights grounds outside the Rules. The First-tier

Tribunal did not make an anonymity direction and I do not consider that the appellants require anonymity for these proceedings in the Upper Tribunal.

Relevant Background Facts

2. The first appellant is the partner of the second appellant, and both of them are citizens of Nigeria. The first appellant entered the UK illegally on 28 December 1998, and has remained unlawfully in the UK ever since. The second appellant entered the UK as a visitor on 3 July 2007, and overstayed after the expiry of his visit visa. The appellants have had three children together, the oldest of whom is a daughter, "P", who was born in the UK on 28 January 2010. Accordingly, P had accrued seven years' residence in the UK as of 28 January 2017. The two younger children were born in 2012 and 2014 respectively, and so they have still not reached the seven year residence threshold.

3. In an application made on 22 February 2017, the appellants sought to regularise their status in the UK on the ground that P had accrued seven years' residence in the UK. On 27 October 2017 the respondent refused the application for the following reasons. Firstly, although one of their children had now been in the UK for over the minimum threshold, it was not accepted that they would not be able to integrate into Nigeria as a family unit of Nigerian nationals. Secondly, they had no legal basis to stay in the UK and they were present in the UK in breach of immigration laws. Accordingly, paragraph EX.1 did not apply. Thirdly, EX.1(a) did not apply for an additional reason, which was that they were both in a parental relationship with P. As they were a family of Nigerian nationals, there were no barriers in them relocating to Nigeria to benefit from their full rights as Nigerian citizens. They would be able to secure work to support themselves and their family, and their children would be able to benefit from Nigeria's education system. Also, they already had family in Nigeria and there was no reason to suggest that their family in Nigeria would not adequately support and assist them and their children on return.

The Hearing Before, and the Decision of, the First-tier Tribunal.

4. Both parties were legally represented before Judge Smith. Mr Adekoya of Atlantic Solicitors appeared on behalf of the appellants. The Judge received oral evidence from both appellants, and from [JA] and [SO].

5. In his witness statement, [SO] said that he was a Pastor of Victory Bible Church International and he confirmed that the appellants and their family were active members of the Church. P was a very active member of the Sunday School and Junior Church. She was a very caring girl to other members of the Church, especially her age group. She showed compassion to other children. The whole Church community would miss her greatly if she had to leave. In his opinion, if P was made to leave the community she loved and was actively involved in, "*it will adversely affect her.*"

6. In his statement, [JA] said that he was a serving Elder in the Victory Bible Church International in Birmingham. He had observed P among other children in their

Sunday School lessons as being very hardworking and respectful, and also very friendly to other children. His daughter, Jennifer, and P were very close together both at school, church, swimming, Explorer lessons and in many other social activities. He wished to recommend "*this good and innocent little girl*".

7. In her subsequent decision, Judge Smith summarised what had happened at the hearing at paragraphs [12]-[16]. She recorded the names of the witnesses who had given oral evidence. At paragraph [14], she said she was going to summarise the evidence and submissions as necessary in the course of explaining her reasons, and she added that a full record of the evidence and the submissions was to be found in the record of proceedings.

8. The Judge gave her reasons for dismissing the appeals at paragraphs [20]-[38]. At paragraph [22], she recorded that it was accepted by both parties that the previous decision of Judge Coates should be considered as a starting point for her assessment of the evidence, in accordance with the decision in **Devaseelan [2002] UK IAT 00702**. Among other things, the following could be distilled from Judge Coates' decision: the credibility of the appellants was poor; the appellants had been working illegally; it was not credible that they had been supported by charitable donations from their church; and the first appellant owed the NHS £1,000.

9. At paragraph [25], the Judge said that P had been attending a primary school since September 2014, and that there was sufficient evidence to establish that each child was settled and doing well. According to the first appellant, P suffered from eczema and received cream to help, but there was no medical evidence to support that claim.

10. At paragraph [26], she noted evidence from the Anglican Church of Light at page 21 of the bundle, setting out details of P's attendance there. The Judge continued: "*[JA] is from the Victory Bible Church International (AB p29) and he also confirms the family's attendance at that church. I have considered all the evidence within the papers in regard to the children and the family as a whole.*"

11. At paragraph [29], the Judge held that P's education was in its infancy, and she was satisfied that it could not be argued that "*it is yet at a crucial stage*". She reminded himself that in **Azimi-Moayed & Others [2013] UKUT 197 (IAC)**, the Tribunal had held that seven years from the age of four was likely to be more significant to a child than the first seven years of life.

12. At paragraph [36], the Judge accepted that there was family life between the appellants and their children, but found that this family life could continue if their appeals were refused. They would return as a family unit. The private life of the appellants and their children had accrued of over many years of overstaying and neither parent showing any willingness to return to Nigeria. Accordingly, private life acquired in such circumstances carried less weight. The Judge continued: "*While [P] does have a private life with school friends, it is very limited.*"

13. At paragraph [37], the Judge held that the stage that each child had reached in their development did not on the evidence establish that they could not take up school life and friends in Nigeria.

The Application for Permission to Appeal

14. The appellants applied for permission to appeal on the ground that the Tribunal had erred in law in not giving adequate consideration to the evidence of the relationships which P had outside of her family unit, "*and the effect breaking those relationships would have on her and her friends.*"

The Reasons for the Initial Refusal of Permission to Appeal

15. On 24 July 2018 First-tier Tribunal Judge Mailer refused permission to appeal for the following reasons: "*The Judge has … considered the human rights claims of the appellants in detail. [She] directed himself in accordance with* ***EV (Philippines) & Others -v- SSHD [2014] EWCA Civ 874*** *regarding the best interests of the children. [She] has considered the best interests of [P] at [29-30]. [She] has given sustainable reasons for dismissing their appeals under Article 8. There are no arguable grounds of appeal.*"

The Reasons for the Eventual Grant of Permission to Appeal

16. Following a reviewed application for permission to appeal to the Upper Tribunal, on 25 October 2018 Upper Tribunal Judge Gill granted permission "*reluctantly*", as in her view it was just about arguable that the Judge may have failed to adequately engage with the evidence in the bundle concerning the existence and the strength of the private life ties of P.

17. Judge Gill added that, if a material error of law was found such that the decision needed to be remade, then in view of the strong adverse credibility assessments by both Judge Coates and Judge Smith, "*the Tribunal may wish to hear evidence as to how these statements [about P] were requested, who requested them and any explanation for the similarity in the written evidence, although this would be a matter for the Judge hearing the case.*"

The Hearing in the Upper Tribunal

18. At the hearing before me to determine whether an error of law was made out, I invited Mr Adekoya to identify, in accordance with Judge Gill's directions, the specific passages in the written evidence relating to P to which the Judge was said to have had inadequate regard.

19. Firstly, he identified the passage in [SO]'s witness statement where he opined that P would be adversely affected by being separated from the Church community: see paragraph [5] above. Secondly, he drew my attention to a passage at page 34 of the bundle where [CR] (who was not called as a witness) expressed the belief that separating P from the other children would jeopardise *"her future ambitions for herself and the community at large."*

20. Mr Adekoya acknowledged that, as observed by Judge Gill, there was considerable similarity in the statements or letters that had been garnered from various people on the topic of P. He explained that the appellants had taken legal advice and had been advised as to what the letters should contain, and they had told the people making the letters what they should say in the letters. That it is why they said similar things about P.

21. Mr Adekoya confirmed that it was not the appellants' case that the Judge had failed to address any evidence that had been given orally. He confirmed that none of the witnesses had given oral evidence to the effect that the family's removal would have an adverse effect on P.

22. Mr Clarke adopted the Rule 24 response settled by a colleague opposing the appeal. He submitted that the First-tier Tribunal Judge had taken everything into account, and had clearly stated that the children should not be blamed for their parents' conduct.

Discussion

23. In **South Bucks District Council v Porter (2) [2004] UKHL 33** Lord Brown said at [26]:

> The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. *Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision* (my emphasis). The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. *The reasons need only refer to the main issues in the dispute, not to every material consideration* (my emphasis).

24. There is a crucial distinction to be drawn between (a) not giving weight to certain pieces of evidence and (b) simply not taking certain pieces of evidence into account at all. It is clear that the Judge considered the written evidence as well as the oral evidence. For example, she picked up on the fact that P purportedly attended the Anglican Church of Light on a regular basis as well as the Victoria Bible Church International, although P's attendance at the Anglican Church of Light is nowhere referred to in the witness statements of the appellants or the witness statements of the two witnesses who were called to give oral evidence. Indeed, I note in passing that P herself in an undated statement only refers to regularly attending one church, and it is unclear which one this is.

25. The Judge's characterisation of P having only a "*very limited*" private life with school friends is nonetheless potentially controversial for two overlapping reasons. The first is that a concerted effort was made to garner a number of letters or statements to the effect that P had forged close friendships with fellow church-goers of her own age -

albeit that some (and possibly most) of these children were also school mates. The second is that, at the same time, a concerted effort was made to garner letters or statements to the effect that these ties outside the home were particularly strong and hence not "*very limited*".

26. However, I do not consider that the Judge was bound to treat the written evidence as showing that, at the age of 8, P had established such a significant private life outside the home as to constitute a weighty factor in the assessment of her best interests, let alone in the real world assessment which is required to address the question of reasonableness arising under s117B(6) of the 2002 Act. P can continue to enjoy a private life in all its material aspects in the country of return, albeit with a different set of friends at church and at school. This is so obvious that it did not need to be spelt out by the Judge. It was open to the Judge to focus on what has been identified by the authorities as important in assessing the strength of a child's private life claim, which is the child's length of residence since the age of four, and whether the child has reached a critical stage in his or her education.

27. It was not an error of law for the Judge not to comment on the opinions expressed by [SO] and [CR] as to the detrimental effect on P of her being separated from the church community, or as to the detrimental effect on the church community of P's departure. The opinions expressed by these witnesses as to the effect on P of relocation to Nigeria did not have any identifiable evidential foundation (such as P having a diagnosed illness or vulnerability), but were, on the face of it, simply based on conjecture and the tacit assumption that P would not be able to enjoy similar private life ties in Nigeria.

28. For the above reasons, no error of law is made out. The Judge gave adequate reasons for finding that the refusal of the appellants' human rights claims was proportionate.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands.

These appeals to the Upper Tribunal are dismissed.

I make no anonymity direction.

Signed Date 1 January 2019

Deputy Upper Tribunal Judge Monson