Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: HU/14560/2018**

HU/14566/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18th March 2019	**On 16th April 2019**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

F S O
I A E A M A-O
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms C Robinson, instructed by Citizens Advice Bureau Waltham Forest
For the Respondent: Ms S Jones, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Nigeria. The first Appellant was born in March 1977 and the second Appellant was born in February 2010. The second Appellant is the first Appellant's son. They appeal against the decision of First-tier Tribunal Judge Aujla promulgated on 6 November 2018 dismissing their appeals against refusal of leave to remain on human rights grounds.

2. Permission to appeal was granted by First-tier Tribunal Judge Farrelly on 27 November 2018 on the following grounds: "An issue arising in the appeal was the reasonableness of expecting the second Appellant to go to Nigeria with the first Appellant. A large part of the appeal was taken up with determining what connection and family support the 1st Appellant had in Nigeria. At the appeal there was evidence from a social worker about the 2nd Appellant and his life in the UK. In the circumstances it is arguable that the position of the 2nd Appellant was not adequately considered, particularly now in light of the Supreme Court decision of KO (Nigeria) [2018] UKSC 53."

Submissions

3. Ms Robinson relied on the grounds of appeal and submitted that the judge had failed to take into account evidence from the associate head teacher at the second Appellant's school and from his social worker. It was clear from that evidence that it was not in the second Appellant's best interest to leave the UK. The judge's finding that it was reasonable for him to go to Nigeria with the first Appellant was irrational. There was no engagement with the evidence from the school or from the social worker and the judge had erred in law in failing to specifically deal with it. Had the judge properly considered this evidence he could not have come to the conclusion that it was reasonable for the second Appellant to leave the UK. The judge's failure to refer to 117B(6), although not a material error of law, demonstrated the judge's failure to adopt the correct approach in relation to reasonableness. The judge was over concerned with the first Appellant's immigration history which he set out and relied on at paragraph 24.

4. Ms Jones relied on the case of JG (s117B(6): "reasonable to leave" UK) Turkey [2019] UKUT 00072 (IAC) in which the President found that Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 required a court or Tribunal to hypothesise that the child in question would leave the UK even if this was not likely to be the case and ask whether it would be reasonable to expect the child to do so. She submitted that the judge was entitled to adopt the view that he had taken for the following reasons.

5. The first Appellant's credibility was at the centre of the case and this was accepted by the Appellants' representative before the First-tier Tribunal. The first Appellant was not believed with regard to her situation in Nigeria. The Appellants submitted that the judge had taken against the first Appellant and this had infected the rest of the decision. However, it was clear from paragraphs 24 and 26 of the decision that the judge had assessed the situation in the real world. The judge did not accept that there were no family members in Nigeria and found that the first Appellant had family and friends there. The first Appellant was fit and well and could obtain employment.

6. The judge's failure to refer to the letters from the social worker and the associate head teacher was not material because they were written on the basis that the Appellants would return to Nigeria with no support. The letters accepted the first Appellant's account that she was a single parent and there was nobody to look after her son. This evidence had to be balanced against the rejection of the first Appellant's oral evidence that she had no family and no one to support her in Nigeria. Any lack of reasoning in the decision was not material. The first Appellant could look after the second Appellant and it was reasonable for him to return with her. The judge's finding was not irrational.

7. Ms Jones referred to page 44 of the Appellants' bundle, a letter from the assistant pastor, and submitted that some of the hardship affecting the second Appellant was caused by his mother's immigration status and her inability to work in the UK. However, should the second Appellant return with his mother to Nigeria, she would be able to work and support him. The judge's finding that it was reasonable for the second Appellant to return to Nigeria was open to him on the evidence before him.

8. In response, Ms Robinson submitted that the second Appellant would experience anxiety if he moved to Nigeria and it would not be in his best interests. The letters from the social worker and the associate head teacher showed a change in the second Appellant's behaviour when he risked losing his home and the anxiety caused by any such change. The letters were written in the context of the second Appellant's lack of knowledge of Nigeria. It was clear that his best interests were to remain here in the UK and the judge's credibility findings in relation to the first Appellant did not impact on this.

9. Ms Robinson referred to an updated letter in the Appellants' bundle submitted for this appeal hearing, but not before the First-tier Tribunal, maintaining that the second Appellant's best interests were to remain in the UK. In the letters and reports before the First-tier Tribunal and those recently submitted to update the situation, the social worker and the school were of the opinion that the second Appellant's ties to the UK and the disruption to his progress, caused by a forced return to Nigeria, would not be in his best interests. Ms Robinson accepted that the second Appellant's situation has not changed since the First-tier Tribunal hearing and submitted that the judge had failed to deal with the evidence from the social worker, the associate head teacher and evidence from the second Appellant as to his wishes and feelings.

10. In summary, the second Appellant had a very strong private life in the UK. It was unreasonable to disrupt his ties and this was apparent from the evidence of the social worker and the school. It was clear on that evidence that it would be unreasonable to require him to leave and the judge's finding to the contrary amounted to an error of law.

Discussion and Conclusions

11. The first Appellant came to the United Kingdom in June 2008 on a false passport. The second Appellant was born in 2010. The judge made the following undisputed findings of fact. The second Appellant was not in contact with his father, he was living with his mother and she is his sole carer. He had resided in the UK for more than seven years. He did not have status in the UK. There was a genuine and subsisting parental relationship between the Appellants. The second Appellant was not at a critical stage in his education and there were no health problems.

12. The judge concluded that it was in the second Appellant's best interests to remain with his mother, the first Appellant, and go to Nigeria where she would be able to care for him. Ms Robinson submitted this finding was not open to the judge on the evidence contained in the letters from the social worker, the associate head teacher and the second Appellant's handwritten letter.

13. The letter from the social worker dated 3 October 2018 states "[The first Appellant] has advised me that she does not have any family remaining in Nigeria." The social worker then acknowledges the second Appellant will be nine years old in February 2019 and states:

> "He has spent all of his life so far in the UK and as such he is fully integrated in life in the UK: he has attended [primary school] since reception and attends an after school club attached to the school where he sees friends. He has spent all of his life in north east London and the family are well integrated in Church life where [the first Appellant] is part of the choir. As [the second Appellant] has not known any life other than this, I am not of the opinion that a removal from the UK would be reasonable at his age or stage of development.

14. The social worker noted a change in the second Appellant's behaviour as a result of anxiety caused by an unstable home situation, contemporaneous with the family's eviction. She states: "Given the above information about the impact of instability and change on his development, I am not of the opinion that a forced removal from the UK is in the second Appellant's best interests."

15. The associate head teacher, in her letter of 3 October 2018, is of the opinion that "It would not be in [the second Appellant's] best interests and would be detrimental to his wellbeing if he had to leave the country and begin a new life in Nigeria." She states:

> "We understand that [the first Appellant] is very anxious about returning to Nigeria as she has no support network there – she had no close relatives or extended family living in Nigeria (her parents and siblings are all deceased). As an only child of a single parent we have noted that the second Appellant gets distressed and emotional when his mother is distressed and we are concerned about the impact on his emotional wellbeing that a move to Nigeria will have given these circumstances. Moving him from his life in the UK to Nigeria at this

stage in his education would have a detrimental effect on the second Appellant's educational progress and his emotional wellbeing."

16. In his handwritten note, the second Appellant's states: "I do not want to go to Nigeria because I won't fit in and it is difficult with no friends. I don't understand the language. The only home I have is here in the UK. My life started in the UK. I go to school here and feel comfortable in my school. I have friends in school and church here in London."

17. There was also evidence from the senior youth support worker with Hackney Marsh Partnership that a move from the UK was likely to have a significant impact on the second Appellant's continued development, confidence, mental and social health.

18. It is apparent from paragraph 11 of the decision that the judge took into account the evidence in the Appellants' bundle. Although the judge did not specifically refer to the letters set out above, his finding that it would be reasonable for the second Appellant to go to Nigeria with the first Appellant was open to him on the evidence before him for the following reasons.

19. The evidence contained in the letters did not demonstrate that it would be unreasonable for the second Appellant to leave the UK. Applying KO (Nigeria) (paragraph 80), the situation had to be considered in the real world. The judge considered the evidence from the first Appellant and concluded that she was not a credible witness. He rejected her evidence that she would have no support in Nigeria were she to be returned there. The real world situation is that the first Appellant will be returning to Nigeria where she lived until the age of 31. She has been in the UK illegally for ten years and she would be returning to family and friends who could support her there.

20. Given that background, the judge then assessed whether it would be reasonable for her child, who was 8 years old at the time, to return with her. The judge did not put in the balance the first Appellant's poor immigration history, but assessed whether it was reasonable in the context of the situation that the Appellants find themselves in.

21. Notwithstanding the social worker and the associate head teacher are of the opinion that it is in the second Appellant's best interests to remain in the UK, the judge's conclusion that it was in his best interests to remain with his mother was open to him on that evidence. The second Appellant is now nine years old. The main focus of his family and private life is with his mother. Whilst he has formed friendships at school and is very settled there, it could not be said that his private life and his ties to the UK were so strong that it would be unreasonable for him to accompany his mother and return to Nigeria. I am not persuaded the judge's finding, that it was reasonable for the second Appellant to go to Nigeria with the first Appellant, was irrational.

22. Looking at the judge's factual findings and applying the relevant law, in particular KO, the judge's conclusion was open to him on the evidence before him. The failure to specifically set out or refer to the letters from the social worker and the associate head teacher, in the judge's findings and conclusions, did not mean the judge had failed to take that evidence into account. The judge looked at the case in the round. The judge's findings were consistent with that evidence and it was open to the judge to attach appropriate weight to it. His failure to specifically refer to it was not material to the decision.

23. This case could not succeed on its facts taking the case at its highest. On the evidence in the letters referred to above, it would not be unreasonable for the second Appellant to leave the UK. Accordingly, I find that there is no error of law in the judge's decision and I dismiss the Appellants' appeals.

Notice of Decision

Appeals dismissed.

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

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

J Frances

Signed Date: 15 April 2019

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed Date: 15 April 2019

Upper Tribunal Judge Frances