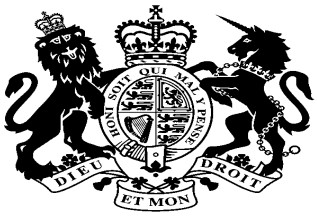

Upper Tribunal
(Immigration and Asylum Chamber) PA/11179/2019 (V)

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
by *Skype for Business*
On 5 August 2020

Decision & Reasons Promulgated
On 13 August 2020

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

JANE [O]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Olabamiji, of DMO Olabamiji, Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant sought asylum on 28 November 2018. The respondent refused her claim, on all available grounds, by a decision dated 30 October 2019.

2. FtT Judge Handley dismissed the appellant's appeal by a decision promulgated on 29 January 2019.

3. By a decision issued on 21 July 2020, Mr C M G Ockelton, Vice President, set aside the decision of Judge Handley, error of law having been conceded by the respondent,

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and accepted the suggestion of both parties that the appeal should be redetermined in the UT. The FtT's findings on protection, including articles 2 and 3 of the ECHR, were unchallenged, and were preserved.

4. The decision goes on:

> "…. The appeal continues as one on article 8 grounds (within or outside the rules) only.
>
> In assessing that issue, the undisputed evidence that the children have received medical treatment in Nigeria will no doubt be relevant, but no judicial findings in relation to article 8 are preserved.
>
> The evidence has already been taken: the remaining task is to assess it according to law. There will be a hearing by remote means …"

5. A transfer order was made to enable the decision to be completed by another judge.

6. I conducted the hearing from George House. No members of the public attended, either in person or remotely. The appellant, and both representatives, attended remotely. The technology enabled a full and fair hearing.

7. It was submitted for the appellant that removal of children who have been in the UK for 7 years or more was likely to be disproportionate "on Supreme Court authority". Mr Olabamiji repeatedly stressed *MA (Pakistan)* [2016] EWCA Civ 705 on 7 years residence being taken as a starting point that leave should be granted, unless there are powerful reasons to the contrary.

8. Apart from legal generalities, the considerations specified for the appellant were these:

   (i) The oldest three children have spent over 7 years in the UK.

   (ii) The two oldest children have sickle cell disease, which caused them regular crises in Nigeria, but not here. They have "a life-threatening, life-long condition".

   (iii) The children are well integrated into the UK, including the educational system.

9. Mrs Aboni accepted that the three older children are now "qualifying children". She submitted that it was reasonable to expect them to leave the UK for Nigeria with their parents, and specified these matters:

   (i) It was normally in the best interests of children to remain with their family. In this case, it would be in the best interests of the qualifying children to leave with their parents and siblings, with no separation of family members.

   (ii) There might be educational and health care advantages for the children in the UK, but not of such a degree as to override other considerations.

   (iii) The main point for the appellant was the sickle cell disease of two of the children, but there was no evidence of anything approaching the threshold to succeed on health grounds, as now set out in *AM (Zimbabwe)* 2020 UKSC 17.

(iv) The medical reports by the children's consultants in the UK raised concerns over availability of medication and treatment in Nigeria, but that was not based on evidence, and indeed was contrary to evidence specified in the respondent's decision at [135 – 140] on medication and treatments available in Nigeria. There was no indication that those would not be available to the children.

(v) The appellant's FtT bundle included academic reports on the matter, but those predated the evidence cited by the respondent, and did not detract from the respondent's position.

(vi) The children's parents are both well educated and capable. There was no reason to think that they would not provide successfully for their children in Nigeria, including access to medical treatment.

10. In response Mr Olabamiji referred again to the need for "powerful reasons", to the improved heath in the UK of the children with sickle cell disease, to the letters from their consultants, and to the favourable reports on the children's academic progress in the UK.

11. I reserved my decision.

12. The appellant's citation from *MA (Pakistan)* is apt to mislead.

13. In *KO (Nigeria)* and others [2018] UKSC 53 the Supreme Court cited with approval from *EV (Philippines) v Secretary of State for the Home Department* [2014] EWCA Civ 874 at [58]:

> "In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?"

The Supreme Court (Lord Carnwath) went on:

> "To the extent that Elias LJ may have suggested otherwise in *MA (Pakistan)* para 40, I would respectfully disagree. There is nothing in the section to suggest that "reasonableness" is to be considered otherwise than in the real world in which the children find themselves."

14. The submissions for the appellant tended to suggest that the best interests of the children are a paramount consideration (and confer a right to remain on the appellant). Those interests are primary, but they are not paramount.

15. Neither parent has a right to remain in the UK. The issue is whether it is reasonable to expect the children to accompany their parents to their country of origin.

16. The medical conditions of the children do not reach the threshold required to succeed on health grounds alone (and, realistically, there was no submission to that effect).

17. The appellant insists that the children are at serious health risk, but vaguely, without specification of evidence in support. The children received treatment while they were in Nigeria. Their doctors here are experts in their care, but they are not experts in availability of medication and treatment in Nigeria. The most recent and accurate information is that cited by the respondent in the decision letter, in the rule 24 response dated 26 June 2020, and in submissions. Although medical care for the population as a whole is not to the same general standard as in the UK, the care available to the appellants' children in Nigeria, on the evidence cited by the respondent, is adequate.

18. The children are doing well here. With their parents, there is no reason to think that they will not adapt and thrive in Nigeria. Their parents are well educated and caring. They will seek to maximise their children's wellbeing and opportunities. The children will be among the more advantaged section of the Nigerian population.

19. The appellant has quoted much law, not all of it entirely accurate, but she has not specified any evidence by which it is less than reasonable to expect her children to remove to Nigeria.

20. The decision of the FtT has been set aside. The decision substituted is that the appeal, as brought to the FtT, is dismissed.

21. No anonymity direction has been requested or made.

7 August 2020
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.