IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005118

First-tier Tribunal No:
HU/01607/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 12th of March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

AMUDA ADUKA IDRIS
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C. Rahman, Counsel instructed by Harrison Morgan Solicitors
For the Respondent: Mr N. Wain, Senior Home Office Presenting Officer

Heard at Field House on 26 February 2024

DECISION AND REASONS

Introduction

1. The Appellant is a national of Nigeria, born in 1950 who appeals against the decision of First-tier Tribunal Judge Suffield-Thompson (hereafter "the Judge") who, in a decision dated 23 August 2023, dismissed the Appellant's appeal against the Respondent's decision to refuse her Article 8 ECHR claim which was made on 16 September 2022.

2. Permission to appeal was initially refused by First-tier Tribunal Judge Handler on 19 September 2023 before permission was granted by Upper Tribunal Judge S. Smith on 20 December 2023 after a renewal application.

Relevant background

3. For the purposes of this error of law decision, I need only summarise the relevant history and selected parts of the Judge's decision:

    a. In recent years the Appellant has sadly experienced the death of her husband (in 2016) and more recently her mother.
    b. The Appellant entered the UK as a visitor on 1 July 2021.
    c. At §24, the Judge accepted that the Appellant is a widow; that her sons live in the United Kingdom; that she entered the United Kingdom with a valid visit visa; that she is in overstayer and that she currently lives with one of her sons, his wife and two children.
    d. In assessing whether or not there would be very significant obstacles to the Appellant's reintegration into Nigeria, the Judge disbelieved the Appellant's claim to be vulnerable to a forced marriage on the basis that she had lived without difficulties in Nigeria as a widow for around six years since her husband passed away, (§37); the Judge also noted that the Appellant had not made an asylum claim on this basis, (§39).
    e. Also relevant to the very significant obstacles test, the Judge found that the Appellant had not been working before she last came to the United Kingdom and that her family could provide her with financial support on return, (§35 & §42).
    f. The Judge also disbelieved the Appellant's claim that she had no friends in Nigeria, (§36) and ultimately concluded that there were no such obstacles to the Appellant's reintegration, (§43).
    g. At §46, the Judge stated that the Appellant has a family life in the UK and that there is the necessary interference for the purposes of Article 8 ECHR.
    h. In respect of the Appellant's grandchildren with whom she lives, the Judge indicated that she had taken into account section 55 of the BCIA 2009 as well as the relevant case law, (§51).
    i. The Judge went on to take note of the evidence that the Appellant lives with her son, daughter-in-law and grandchildren and helps in taking the children to school and helps with other childcare, (§53 & §53).
    j. At §54 however, the Judge concluded that there was no family life between the Appellant and her son.
    k. The Judge went on to consider broader proportionality issues including s. 117B of the NIAA 2002 and ultimately concluded that the decision under appeal did not breach the Appellant's human rights, (§57).

The error of law hearing

4. In his submissions, Mr Rahman relied upon the grounds as advanced on renewal to the Upper Tribunal but made no other oral submissions about them. In order to assist Mr Rahman, I raised with him during his submissions

the observation that his arguments appeared to be related to a remaking of the substance of the appeal rather than establishing material legal error. Mr Rahman indicated that he was content to rely upon the submissions he had made and emphasised the closeness of the family relationships and the impact on the children.

5. I then heard submissions from Mr Wain and after Mr Rahman's brief response, I formally reserved my decision.

Findings and reasons

6. As I have already noted, Mr Rahman did not in fact speak to either of the two grounds as advanced in the renewal application to the Upper Tribunal and therefore I have concentrated my assessment on the way those grounds are formulated in writing.

7. In assessing the question of materiality, I have applied the Court of Appeal's recent guidance on the principle in ASO (Iraq) v Secretary of State for the Home Department [2023] EWCA Civ 1282, ("ASO"):

> "44. …First, if there were no errors of law, the UT should have dismissed A's appeal. Second, if there were any errors of law, it is not possible to decide whether they were material without deciding, first, the nature and extent of any such errors, and to what extent, if any, the decision rested on those errors. Third, it is not possible to decide whether any errors are material without considering whether a rational tribunal would have been bound to come to the same decision on the evidence which the F-tT considered…"

Ground one

8. In ground one, the Appellant asserts that there is a material error arising as a consequence of the apparently contradictory findings of the Judge at §§46 & 54 in which she appears to initially accept and then latterly reject the contention that the Appellant enjoys family life in the UK.

9. It is unfortunate that the Judge did not specify between whom the Article 8 family life (as accepted at §46) was enjoyed. It may have been that the Judge was referring to a family life between the Appellant and her grandchildren but that simply is not stated.

10. Problematically, although the Judge later refers to the Appellant's and her family's rights to family life at §48, the paragraph also refers to the Appellant as both male and female and so the confusion is compounded.

11. Whilst the Appellant is certainly right to say that a finding of family life is relevant to the weight to be given to the Appellant's side of the balancing exercise under Article 8(2), I nonetheless conclude that, in this case, the unfortunate ambiguity in respect of the findings on Article 8(1) has not led to a material error of law.

12. Ultimately, it is important to bear in mind that the Judge lawfully concluded that the Appellant did not take the benefit of the Immigration Rules. The Judge naturally centred upon the representations made in respect of very significant obstacles and rejected them, but it is also relevant to note that this was not an Adult Dependent Relative case.

13. It seems to me then, that despite this error, the Judge did nonetheless go on to carry out a full assessment of the competing factors under Article 8(2) at §§48 – 57.

14. Within that assessment, the Judge highlighted the significance of the weight to be given to the public interest in maintaining a firm but fair immigration policy (§56); this was subsequent to the finding that the Appellant would be dependent upon using government services such as the NHS without having made any financial contribution to those services, (§55).

15. The Judge also found that whilst the family would miss her, they had nonetheless coped without her childcare help in the years before her last arrival and could return to those alternative arrangements; equally there was no reason why the Appellant could not continue to visit the UK as she had done before, (§53).

16. Looking at the totality of the detail, it seems to me that, applying ASO, a rational Tribunal would have been bound to come to the same decision (subject to my finding about Ground 2 below) and therefore the error could not have made a difference to the outcome.

Ground two

17. In this ground, the Appellant asserts that the Judge materially erred by failing to make express finding as to whether the best interests of the grandchildren were for the Appellant to remain in the United Kingdom or not.

18. I have noted the reformulation of the challenge at paragraph 30 of the renewal grounds as suggesting that the Judge erred by not assessing whether the grandchildren's best interests were to remain (or not) in the UK. It may be that paragraph 30 is subject to slightly mistaken phrasing as there appears to be no suggestion in the papers before me that the Respondent predicated his argument upon the expectation that the Appellant's British grandchildren would relocate to Nigeria.

19. I have therefore centred upon the argument at paragraph 27 that the Judge materially erred in not assessing whether the best interests of the grandchildren were for the Appellant to remain in the United Kingdom.

20. In essence, the Appellant says the failure to expressly identify where the best interests of the children lay was a fundamental missing building block in the assessment of Article 8(2).

21. Again, the Respondent does not particularly dispute that the Judge did not expressly make a finding as to where the best interests of the children lay. The Respondent's position is that the Judge nonetheless did not materially err because she went on to consider the impact of the removal upon the children within the overall context of the proportionality assessment. Mr Wain also emphasised that in such an assessment, the best interests of the affected children were not the paramount interest but a primary one to be considered overall.

22. Again, applying the approach in ASO, I conclude that the error made by the Judge is not a material one.

23. In coming to that conclusion, I have applied the Court of Appeal's decision in AJ (India) v Secretary of State for the Home Department [2011] EWCA Civ 1191 at §53:

> "Before expressing final conclusions I make the following general comments, in addition to those made in paragraphs above.
>
> > (a) As Baroness Hale stated at paragraph 33 in ZH, consideration of the welfare of the children is an integral part of the Article 8 assessment. It is not something apart from it. In making that assessment a primary consideration is the best interests of the child.
> >
> > (b) The absence of a reference to section 55(1) is not fatal to a decision. What matters is the substance of the attention given to the "overall wellbeing" (Baroness Hale) of the child.
> >
> > (c) The welfare of children was a factor in Article 8 decisions prior to the enactment of section 55. What section 55 and the guidelines do, following Article 3 of UNCRC, is to highlight the need to have regard to the welfare and interests of children when taking decisions such as the present. In an overall assessment the best interests of the child are a primary consideration.
> >
> > (d) The primacy of the interests of the child falls to be considered in the context of the particular family circumstances, as well as the need to maintain immigration control."

24. In my judgement, the question is: has the Judge as a matter of substance, considered the impact of the decision upon the well-being of the qualifying children?

25. In this case, the Judge expressly directed herself to section 55 and made findings about the nature of the Appellant's involvement in the life of her grandchildren.

26. I see no error in the Judge's finding at §53, that the removal of the Appellant would not be "damaging" for the grandchildren. In my view, fairly read, this constitutes a finding by the Judge about the well-being of the relevant children as required in law.

27. As I have already detailed in my findings in respect of ground one, the Judge laid out in detail the overall competing interests and, I find, lawfully explained why the public interest in this appeal outweighed the particular Article 8 rights of the Appellant and her family.

28. I therefore find that the Judge did not commit any error in the assessment of section 55 but even if I am wrong about that, and it was an error for the Judge not to expressly find whether the best interests of the grandchildren were for the Appellant to remain in the UK, I nonetheless find that such an error is not material because of the Judge's other findings about the significant weight to be given to the public interest in this case. Applying ASO, I conclude that a rational Tribunal would have been bound to have come to the same conclusion and therefore the error could not have made a difference to the outcome.

Notice of Decision

The Appellant's appeal is dismissed; there is no material error of law in the Judge's decision.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 March 2024