Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/04690/2014
IA/04700/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 30 October 2014	**On 17 November 2014**

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department
[No anonymity direction made]

Appellant

and

TA
RA

Claimants

Representation:
For the claimants: Ms Z Jacob, instructed by Graceland Solicitors
For the respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the continuation/resumed hearing of the appeal following my decision to set aside the decision of the First-tier Tribunal.

2. The claimants, TA, date of birth 16.8.76, and her daughter RA, date of birth 27.7.07, are citizens of Nigeria.

3. The Secretary of State appealed against the determination of First-tier Tribunal Judge Walters, who, on human rights grounds, allowed the claimants' appeals against the decision of the respondent to refuse their applications for leave to remain in the UK on the basis of article 8 family and/or private life.

4. Designated First-tier Tribunal Judge McCarthy granted permission to appeal on 1.8.14. Thus the matter came before me on 10.9.14, as an appeal in the Upper Tribunal.

5. I found that the First-tier Tribunal erred in conducting the article 8 ECHR proportionality balancing exercise, taking into account irrelevant matters and failing to take into account factors favouring refusal of the application, including first claimant's immigration status, that private life was established at a time when the claimants had no right to remain and thus their status was precarious, and failed to properly consider the relevant case law on the best interests of the child claimant.

6. I thus set aside the decision of the First-tier Tribunal and adjourned the remaking of the appeal to be heard by myself at Field House. Thus the matter was relisted before me on 30.10.14.

7. I also gave directions that I would consider as a preliminary issue whether the decision of the Secretary of State, dated 3.1.14, was in accordance with the law and whether therefore the correct outcome of the appeal would be to allow it to the limited extent that the decision was not in accordance with the law and that it remained for the Secretary of State to make a decision in accordance with the law.

8. I heard the submissions of the parties on the preliminary issue and reached the conclusion that it is not necessary to return the appeal to the Secretary of State, even if the wrong Rules had been considered, because it is open to the Tribunal to consider what are the correct Rules and apply them to the claimants' circumstances.

9. I find that the relevant application was made on 26.6.12 and the decision of the Secretary of State in respect of that application was made on 3.1.14. The transitional provisions accompanying the new Rules in force from 9.7.12 preserved the effect of the previous version of the Rules for applications made under the Rules prior to 9.7.12 but not decided by that date. However, this was a human rights article 8 ECHR application, made entirely outside the Rules. There were no pre-9.7.12 Rules for dealing with article 8 and thus there could be no old Rules to preserve. The transitional provisions have no relevance to an application made entirely outside the Immigration Rules, as there was no equivalent provision under the old Rules for consideration of the application. The only framework for considering private and family life in existence at the date of decision was that of the new Rules under paragraph 276ADE and Appendix FM. The Secretary of State is required to undertake a proportionality assessment and the new Rules comprise the framework for that assessment. This is entirely consistent with both Haleemudeen, and Edgehill, summarised in my error of law decision.

10. In the circumstances, I find that decision of the Secretary of State was in accordance with the law and that she was correct to apply Appendix FM and paragraph 276ADE, before going on to consider whether there were exceptional circumstances in which refusal would result in unjustifiably harsh consequences such that it would be disproportionate to the claimant's rights under article 8 ECHR.

11. Before making my findings of fact, I have taken into account all the documentary evidence before me, including the documents and other evidence contained in the claimants' bundles for both the First-tier Tribunal and the Upper Tribunal rehearing of the appeal. It is unnecessary to recite or summarise that evidence as the parties are aware of the information placed before the Tribunal.

12. I also heard and took into account the following oral evidence:

    (a) The first claimant, Temitope Adeloa Adesanya, relying on her witness statements of 30.5.14 and 30.10.14;

    (b) Wahab Adebanji Olayiwola, the father of the second claimant, relying on his witness statement of 30.10.14;

    (c) Olufumilayo Adebowale Adesanya, relying on his witness statement of 30.10.14;

    (d) Adeleke Adejuwon, relying on his letter of support at A47.

13. The relevant background can be briefly summarised as follows. The first claimant claims to have come to the UK as a family visitor in 1995, though there is no record of this. She has been an overstayer at least since 2006. Her daughter, the second claimant was born in the UK in 2007 and has thus now been in the UK some 7 years. Over two years later, in November 2009 the first claimant made an application for leave to remain outside the Rules. This was refused and despite being twice reconsidered, the refusal was maintained. Another application on the basis of long residency was refused in 2011. Despite the several applications and refusals the claimants have remained in the UK when they should have left. On 25.6.12 the human rights claim the subject of this appeal was made and refused on 20.6.13. The Secretary of State agreed to reconsider the application, resulting in the further refusal of 3.1.14.

14. The first claimant has had no legal basis to remain in the UK since 1996, or 2006, depending on when she first arrived here. She claims that her elderly mother (born in 1934) lives alone in a village near Lagos, Nigeria and she has recently had a stroke. However there is no medical evidence of any ill-health of her mother. She claims not to have been in touch with her mother since she visited the UK in 2006/7. However, her first witness statement claimed that her mother visits the UK regularly to see her and her sisters and cousins. She now claims that statement was incorrect and that her mother only came to the UK once. She claims that she has no one to go back to in Nigeria and she and her daughter would have to live on the street.

15. The first claimant relies on close family ties in the UK. Her surviving siblings, two sisters, live in the UK as British citizens. The first claimant has worked illegally in the UK over several years, until she was asked to prove her immigration status. Between 2006 and 2013 she lived with her sister Oluwakemi Adedoyin Lambo. From 2013 and continuing she and her daughter live with Oluwabumni Afusait Bakre Adejuwon and her family.

16. According to her first witness statement, she met the father of her daughter Mr Olayiwola in 2006. He ended the relationship when she became pregnant and she refused his request to terminate the pregnancy. The second claimant was born 27.7.07 and has thus now lived in the UK for over 7 years. There was no reference in this witness statement to any ongoing relationship or contact between either of the claimant's and the second claimant's father.

17. In her second witness statement, however, after repeating that they split up when she became pregnant, she claims that there is now a good relationship between the second claimant and her father. She said that the first time he saw his daughter was when she was 4 months old and that from that time he has been involved with her life, seeing her most weekends and speaking to her on a mobile phone he bought her.

18. In evidence to the First-tier Tribunal, the first claimant was challenged about the discrepancy between her statement and her oral evidence. He is not named on the birth certificate and she did not tell him about their Tribunal hearing and the prospect of being removed to Nigeria, or ask him to make a witness statement detailing his contact with the second claimant. The judge did not believe that there was any contact between them, and that is a matter I must take into account in considering the further evidence.

19. It is concerning that no reference to any ongoing relationship between the second claimant and her father was mentioned in the first witness statement, which states at §7 "this ended our relationship." Surprisingly, the second witness statement does not explain when he got back in contact. On any version, of events it is clear that the first claimant has been prepared to be dishonest in her statements immigration authorities. This undermines her credibility and the reliance I can place on her assurances as to the extent of contact between the second claimant and her father at the present time.

20. When challenged about the relationship between the second claimant and her father in evidence before me, the first claimant gave an account that they split up when she was pregnant and they lost contact for some months. Through a friend they got back in contact in 2006. That would have been before the birth of the second claimant. She was asked if it was her case that they got back in contact in 2006 and that he has had a role in the second claimant's life since then. She then said that they talked a "little bit" in 2006 but then stopped and were not back in contact until 2010. That does not explain how she could say that the first time he saw the second claimant was when she was 4 months old, which would have been around late 2007. No satisfactory

explanation has been provided as to how or why they allegedly got back in touch from 2010.

21. More significantly, I note that in her March 2010 statutory declaration for her long residence application, the first claimant stated that there was no contact whatsoever with the second claimant's father, "Her father is now separated from us. I am having a sole responsibility for her upkeep. We do not have any contact with him since he separated." The declaration concludes, "I make this declaration solemnly and conscientiously believing the same to be true and by virtue of the statutory Declarations Act 1835." On any version of her evidence, that account could not be true.

22. Asked why she had not mentioned the resumed relationship in her first witness statement, signed in May 2014, she said only that the solicitor didn't ask her about it. Challenged as to that answer she said perhaps it was because she was distressed. I found the first claimant's evidence very unsatisfactory, vague and unreliable. In the circumstances, taking the evidence as a whole, I find that when answering questions on this issue the first claimant was fabricating her evidence to try and address this by suggesting that they got back in touch in 2010 after the statutory declaration. I find her evidence on this issue not credible and am satisfied that she was being dishonest in her oral evidence before me.

23. It was pointed out to the first claimant that none of the photographs she adduced show the second claimant with her father during the years when it is said they have had a good relationship. Neither was he mentioned in any document relating to the claimants during this period. She had no satisfactory explanation. As part of his oral evidence, Mr Olayiwola showed me a few photographs on his mobile phone from two separate dates in September 2014, in which he and the daughter are together at either McDonalds or KFC. He had a couple of other earlier photographs of the second claimant but in which he does not appear. To my view the photographs of the father with the second claimant appear contrived and I have reached the conclusion, taking the evidence in the round, that they were taken for the express purpose of bolstering the claimants' case at this appeal hearing. In any event, taken as a whole the evidence demonstrates a relationship only as far back as a date after I found an error of law in the decision of the First-tier Tribunal and set it aside on 10.9.14.

24. I take into account the handwritten statements of the second claimant, but I agree with Judge Walters that it is obvious that she has copied the first of these from a document produced by a lawyer or other adult. However, neither letter makes any reference to her father or any relationship with him. She cites a number of reasons why she does not want to go to Nigeria. Her primary reason for wanting to remain it to continue her education and to see her friends, uncles aunts, and cousins.

25. Asked how often the second claimant saw her father, the first claimant said in evidence that sometimes when he is free he picks her up on Friday, or he sometimes spoke to her on the phone; it was all rather vague. Later she said that she took her daughter to meet him on Fridays after school and he spend 1 hour with her at

McDonalds and then she picked her up. Sometimes he saw her on Saturdays. Her witness statement suggests he saw her most weekends.

26. I did not find Mr Olayiwola a reliable witness. He is married to a Dutch citizen, as a result of which he has an EEA residence card, but she was not present; he said she was making a visit to the Netherlands to see her mother. The only evidence of that relationship other than his word was the marriage certificate, his passport vignette, and a rather fuzzy picture of her passport. In any event, he does not have a permanent right of residence in the UK and it is far from clear to me on the limited evidence available that he is in a genuine relationship with an EEA national exercising Treaty rights in the UK. He admitted in oral evidence that in his appeal he failed to mention that he had a child in the UK. In the absence of credible and satisfactory positive evidence as to the issue of his current relationship, I find that his status in the UK is potentially precarious.

27. His rather short witness statement is to the effect that although he is married to someone else, the second claimant is his only daughter and he has a close relationship with her. In addition to meeting at the weekend in McDonalds or KFC, he talks to her on the phone on most days and helps her with schoolwork and provides financial support for school clubs. He stated that he would be devastated and traumatised if she were required to return to Nigeria, where she has never lived and is terrified of the security situation there. Strangely, no explanation is given as to his relationship with the first claimant or when and in what circumstances he has had contact with the second claimant. I take into account that he turned up to give evidence in support of the claimants and the argument that he would not have done so if there were not such a relationship. However, taken as a whole, I found the whole situation and evidence in support rather odd and unsatisfactory. I was far from satisfied that there was any genuine relationship at any stage.

28. In his oral evidence to me he was asked whether he had always been in touch with the second claimant. He said not regularly, but he always talked to her. He said that they were together with the second claimant a couple of months before he separated from the first claimant. That was entirely at odds with the evidence of the first claimant. More significantly, according to him, they resumed contact in 2008. When told that the first claimant had said that it was in 2010, I found that he adapted his evidence in quite a non-credible way to suggest that since he founded his relationship with his wife he had not seen the first claimant but made sure that he saw his daughter. He claimed that he had seen her almost every weekend. Asked to clarify whether he saw the first claimant in relation to these visits with the second claimant, he did not answer the question directly but said that they did not talk. Even that appeared not to be true, because he went on to explain that he would call his daughter to see if he could see her at the weekend and ask her to pass the phone to the first claimant so they could make the arrangements. Later, he said that he had attended at the first claimant's home to make such arrangements and had done so the previous weekend.

29. Mr Olayiwola seemed to have difficulty answering a straight question with a straight answer. He frequently altered his account when challenged. He said that he had been seeing his daughter on this weekend meeting at McDonalds basis since 2011. Asked what the arrangements were before 2011 he did not directly answer the question, but eventually said that prior to 2011 his contact with the second claimant was perhaps twice a month. Asked when he started to see her twice a month he said before 2010. Later he said that before 2010 he also saw her twice a month. Asked how often he had seen her between 2007 to 2010, he simply replied, from birth. He then went on to say that from 2007-2010 he saw his daughter twice a month and from 2011 every weekend. Frankly, I found his prevarication and alteration of his account undermining of not only his credibility but the claimants' claim that the second claimant had a good relationship with her natural father in the UK.

30. I have taken account of the oral evidence of the other witnesses, pleading for the claimants to be allowed to remain in the UK. I note, however, that neither witness mentions the second claimant's father in their statements or letters. The claimant's sister was asked if she knew Mr Olayiwola but could only say that she thought he was the father of the first claimant's baby. Nothing in the evidence of these witnesses supports any ongoing relationship between the first or second claimant and Mr Olayiwola.

31. In all the circumstances and for the reasons stated herein, I am not satisfied on the evidence taken as a whole that there is in fact any genuine or subsisting father-child relationship between the father and the second claimant. I find that it has been entirely contrived, with the father's apparent cooperation, for the purpose of bolstering the claimants' application for leave to remain. I thus reach the conclusion that there is no family life between either claimant and Mr Olayiwola that could engage article 8.

32. Claims in respect of private and family life have to be considered first under the Immigration Rules. However, it is clear that the first claimant does not meet the requirements of either Appendix FM or paragraph 276ADE of the Immigration Rules. Although the second claimant has now been in the UK for just over 7 years and is under the age of 18, to qualify under 276ADE the claimant would have to show that it would not be reasonable to expect her to accompany her mother to Nigeria. In the circumstances of this case, including my article 8 assessment, I find that the second claimant does not meet that criteria. Her mother does not qualify for leave to remain and as I have found that there is no family life with her father sufficient to engage article 8, even considering such family life as there may be with the relatives with whom she lives, I find that it is reasonable to expect her to accompany her mother to Nigeria, even though she has never lived there and has spent all her life in the UK.

33. I do not accept the argument advanced by Ms Jacob at §62 to 68 of her skeleton argument and elaborated upon in her oral submission to me that the first claimant meets the requirements of Appendix FM for leave to remain. That argument depends on the entitlement of the second claimant to remain, which I also reject for the

reasons set out herein. I find that it is would in fact be reasonable to expect the second claimant to leave the UK with her mother and thus the first claimant cannot meet the requirements of Appendix FM for leave to remain as a parent, quite apart from any difficulty arising from the requirement that the 7 years must precede the date of application.

34. It is arguable that in relation to at least the second claimant if not the first, the application paragraph 276ADE is a form of proportionality assessment. However, recent case law has suggested that neither Appendix FM nor paragraph 276ADE is a complete code in the Gulshan or the MF(Nigeria) sense.

35. In MF (Nigeria) v SSHD [2013] EWCA Civ 1192, the Court of Appeal held that in relation to deportation cases the 'new' Immigration Rules are a complete code but involve the application of a proportionality test. Whether that is done within the new rules or outside the new rules as part of the article 8 general law was described as a sterile question, as either way the result should be the same; what matters is that proportionality balancing exercise is required to be carried out. In other words, a proportionality test is required whether under the new rules or article 8.

36. More recently, Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 00640 (IAC) has set out, inter alia, that on the current state of the authorities:

> (b) after applying the requirements of the Rules, only if there may be arguably good grounds for granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them: R (on the application of) Nagre v Secretary of State for the Home Department [2013] EWHC 720 (Admin). In the absence of such insurmountable obstacles, it is necessary to show other non-standard and particular features demonstrating that removal will be unjustifiably harsh: Nagre.

37. Applying the above guidance and case authority, I have considered whether there might arguably be good grounds for granting leave to remain outside the Immigration Rules, on the basis of the claimants' circumstances, or other compelling circumstances, insufficiently recognised in the Rules so as to render the decision unjustifiably harsh. I do not find any exceptional, compelling or compassionate circumstances in this case. Obviously, both claimants would wish to remain in the UK and they have naturally developed emotional ties with other relatives and the more distant relatives with whom they live. That is not to be undervalued and I have carefully considered the letters of support and the oral evidence in relation to this issue. However, that does not, in my view amount to compelling circumstances. Neither can I conclude that on the facts of this case the claimants's circumstances are such that removal could be regarded as unreasonably harsh.

38. Nevertheless it seems to me that pursuant to section 86 of the 2002, the Tribunal is required to undertake an article 8 assessment outside the Rules, applying the five Razgar steps, of which the crucial issue, as it is in most cases, is the proportionality balancing exercise between on the one hand the legitimate and necessary aim of the state to protect the economic well-being of the UK through the application of immigration control and on the other the article 8 private and family life rights of the claimants.

39. In considering the public interest in the proportionality balancing exercise I am obliged to have regard to section 117B of the 2002 Act:

> 117B Article 8: public interest considerations applicable in all cases
>
> (1)The maintenance of effective immigration controls is in the public interest.
>
> (2)It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
>
> (a) are less of a burden on taxpayers, and
>
> (b) are better able to integrate into society.
>
> (3)It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
>
> (a) are not a burden on taxpayers, and
>
> (b) are better able to integrate into society.
>
> (4)Little weight should be given to—
>
> (a) a private life, or
>
> (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
>
> (5)Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
>
> (6)In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
>
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
>
> (b) it would not be reasonable to expect the child to leave the United Kingdom.

40. It follows from this that little weight should be given to any private life established by either claimant given that their immigration status was to say the least precarious and that the first claimant overstayed in the UK and has been unlawfully present since at least 2006, if not longer. It is also relevant that the first claimant is not financially independent and has had to depend on the generosity of others for support, once she was prevented from undertaking further illegal work. That she might in the future be able to obtain employment to support herself and the second claimant is a possibility which I have, however, taken into account.

41. It is well established that in performing the Article 8 balance under the ECHR regard must be had to the welfare of any children of the family. In considering proportionality I have borne in mind section 55 and the need to take as a primary consideration the best interests of the second claimant child, who, through no fault of her own, was born in the UK and has never lived in Nigeria. She has known only life in the UK and in enrolled at school and commenced her education, with all the expected consequences flowing from that for her integration into life in the UK.

However, I have to bear in mind that the second claimant is not a British citizen and formed her private life in the UK when she had no lawful status.

42. In Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 197(IAC) the Upper Tribunal in considering the case law in relation to decisions affecting children identified the following principles to assist in the determination of appeals where children are affected by the appealed decisions:

> "i) As a starting point it is in the best interests of children to be with both their parents and if both parents are being removed from the United Kingdom then the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary .
> ii) It is generally in the interests of children to have both stability and continuity of social and educational provision and the benefit of growing up in the cultural norms of the society to which they belong.
> iii) Lengthy residence in a country other than the state of origin can lead to development of social cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period.
> iv) Apart from the terms of published policies and rules, the Tribunal notes that seven years from age four is likely to be more significant to a child than the first seven years of life. Very young children are focussed on their parents rather than their peers and are adaptable.
> v) Short periods of residence, particularly ones without leave or the reasonable expectation of leave to enter or remain, while claims are promptly considered, are unlikely to give rise to private life deserving of respect in the absence of exceptional factors. In any event, protection of the economic well-being of society amply justifies removal in such cases."

(a) In EV (Philippines) the Court of Appeal held that in answering the question whether it is in the best interests of a child to remain the longer the child has been in the UK the greater the weight that falls into one side of the scales. "In the balance on the other side there falls to be taken into account the strong weight to be given to the need to maintain immigration control in pursuit of the economic well-being of the country and the fact that, ex hyopthesi, the applicants have no entitlement to remain." "If it is overwhelmingly the child's best interests that he should not return, the need to maintain immigration control may well not tip the balance. By contrast, if it is in the child's best interests to remain, but only on balance (with some factors pointing the other way), the result may be the opposite." "The immigration history of the patents may also be relevant e.g. if they are overstayers, or have acted deceitfully."

43. I find that it there is insufficient her to demonstrate an overwhelming best interest to remain. It is in fact a balancing exercise. Pursuant to EV (Philippines) and the skeleton argument I confirm that I have considered the following factors:

(a) The age of the second claimant, now 7;

(b) Length of time in the UK, now 7 years;

(c) Length of time in education, since the age of four;

(d) To what extent they have become distanced from Nigeria. In that regard I do not accept that the first claimant has no contact with her mother. Their relationship was close enough for mother to visit her family in the UK and for the family to be aware of her state of health;

(e) How renewable their connection will be. The second claimant has no connection with Nigeria, but her mother does;

(f) To what extent they will have linguistic, medical or other difficulties in adapting to their life in that country. As set out herein, I accept that there will be difficulties of integration and adjustment, but as the child is young she will be able to adapt with the support of her mother;

(g) The extent to which the course proposed will interfere with their family life or rights if they have any) as British citizens. Neither are British citizens, but I accept that the decision to remove is a sufficiently grave interference so as to engage article 8.

44. In considering the best interests of the child, I have also taken into account all those factors urged upon me by Ms Jacob, as well as those considered by Judge Walters at §30 of his decision, including the second claimant's education and career ambitions and her social life and activities. I am not satisfied that there is any genuine and subsisting father-daughter relationship between the second claimant and Mr Olayiwol and thus it cannot be said that it is in her best interests to remain in the UK, whether or not his own entitlement to remain as the spouse of an EEA national exercising Treaty rights proves to entitle him to a right of permanent residence.

45. Whilst the second claimant has lived in the UK for 7 years, most of that time, all but perhaps the last 2-3 years, will have been focused on her mother and the close household members. She is still young enough to adapt. The second claimant's strongest bond will be with her mother and she is not going to be separated from her mother. Either they stay together in the UK or they are removed together to Nigeria.

46. To the extent that the claimants live with another family of relatives, I take into account the authority of Beoku-Betts v SSHD [2008] UKHL 39. This case considers whether the Appellate Authority should take into account the impact of the claimant's proposed removal upon those sharing life with him or only its impact upon him personally. The right to respect for the family life of one necessarily encompasses the right to respect for the family life of others with whom that family life is enjoyed.

47. I do not accept that there has been any unmeritorious delay on the part of the Secretary of State by a failure to remove the claimants. The first claimant had no lawful right or any legitimate expectation that either she or the second claimant

would be able to remain in the UK. Although she made a number of applications, all of which were refused, she failed to leave. It is reasonable to expect a law-abiding person to leave the UK once an application for leave to remain has failed, rather than wait for enforcement to take place.

48. I do find that there has been an unsatisfactorily explained delay on the part of the first claimant. If she did come to the UK in 1995 as claimed, she left it to 2009 to make any application at all. She claims that this was because she could not prove she had arrived in 1995. I do not find that credible. Even if she only arrived in 2006, she still waited 3 years to make any application. Instead, she kept herself under the radar, working illegally and bearing a child, taking advantage of state benefits to which she had no entitlement, including educations for herself and her daughter. To a significant degree, the delay and the consequent development of any private or family life was enabled by the first claimant's failure to abide by immigration rules and her illegal behaviour in remaining.

49. Whilst I have taken into account all the evidence, the following further factors in the claimants' favour have been into account. However, by no means is this intended to be an exhaustive list:

    (a) That the first claimant has two sisters and other near relatives in the UK, with whom she now has a good and close relationship;

    (b) That the claimants live in the home of a more distant relative and that the claimants, particularly the second claimant, have formed a close bond with the children of the family;

    (c) That the first claimant has made a number of applications to attempt to regularise her position in the UK;

    (d) That the first claimant has worked in the UK, albeit illegally, demonstrating that she has the potential to provide for herself and her daughter;

    (e) The degree of integration of both claimants into their social environment, as set out in the papers and evidence called before me, without needing to recite it here;

    (f) That the second claimant has known nothing other than life in the UK up to the present time and that all of her education to date has been here and that she has been in schooling since age four and is progressing well. That her education is likely to be disrupted and replaced by education in Nigeria that is inferior to that of the UK and that her life and career prospects may be very much diminished when compared with what she might expect if permitted to remain in the UK;

    (g) Similarly, the first claimant's prospects in Nigeria may be very much inferior to that she could expect if permitted to remain in the UK.

50. As factors favouring removal, the matters I have taken into account include the following when conducting the proportionality balancing exercise, but this is by no means an exhaustive list.

(a) Any private life was established at a time when the claimants' immigration status was both unlawful and precarious and they had no right to be or remain in the UK;

(b) That the claimants could continue such private life and associations with their wider family members through modern means of communication and occasional visits;

(c) That the claimants still have family in Nigeria, even if the mother/grandmother is elderly and perhaps unsurprisingly not in the best of health;

(d) That the first claimant has lived most of her life in Nigeria and will have retained her cultural identity to Nigeria, making integration the easier;

(e) That the claimants have not demonstrated that there are very serious obstacles to their integration in Nigeria. Even though the second claimant has never lived there and is fearful because of what she has been told, or heard or read, she is young, can quickly adapt, and has her mother to be with her;

(f) That there are no medical or similar issues preventing their return to Nigeria;

(g) That the first claimant's relationship with her adult siblings and other relatives discloses, in my view, no more emotional bond than one might expect between adult relatives. It is now commonplace that adult children and siblings live their lives far apart. Whilst they may stay in touch and feel close to each other, that does not mean that they have family life which engages the sort of right to be protected under article 8;

(h) They may desire to remain and take advantage of life in the UK, including education and career opportunities, but that neither creates a legitimate expectation of being able to remain nor provides any reason why they should be permitted to remain outside the Immigration Rules. Article 8 is not a shortcut to compliance with the Immigration Rules;

(i) That the first claimant has engaged in unlawful behaviour, including overstaying, working illegally, and failing to leave when her applications to remain were refused;

(j) That the first claimant is currently unemployed with no job offer. If she is permitted to remain with the second claimant it is very likely that they will seek and/or be entitled to state benefits, as they are not financially independent;

(k) Pursuant to EV (Philippines), as potentially outweighing interests of the child to remain and take advantage of education and life in the UK, that whilst she has

been in the UK 7 years from birth, those 7 years are not as significant as 7 years from, say, the age of 4, and thus the weight to be attached to those years for the second claimant in the balancing exercise is limited;

(l) The strong weight to be given to immigration control, particularly when the claimant entered the UK as a visitor with leave limited to 6 months and by implication making a false assurance that she intended to leave on or before the expiry of such leave, and that she has remained in the UK for a significant period of time without contacting the immigration authorities;

(m) That although there is an immigration rules route for leave to remain, the claimants do not meet any of those requirements;

(n) That I have found that there is no genuine or subsisting family life relationship between the second claimant and Mr Olayiwol and thus that it cannot be in the best interests of the second claimant to remain in the UK;

(o) That there is nothing remarkable, exceptional or compelling about the circumstances of the claimants. In essence, their private and family is only what one would expect to have developed over their years of unlawful presence;

51. Weighing all these factors together, in the round, in the proportionality balancing exercise I find that the decisions of the Secretary of State to remove the claimants is entirely proportionate to the public interest. Whilst there may be some hardship or difficulty in adjusting to life in Nigeria for both claimants in perhaps slightly different ways and for different reasons, and although they will be sad and disappointed to leave their friends and wider family members in the UK, there are no circumstances here which one could properly described as exception, or sufficiently compelling and/or compassionate so as to justify granting leave to remain on the basis of article 8 private and/or family life under article 8 ECHR outside the Immigration Rules on the basis that the decision would otherwise be unjustifiably harsh. The claimants have no right to remain in the UK or any legitimate expectation of being able to do so. The situation has only been made more difficult for them by reason of the first claimant's failure to return home to Nigeria when she should have done, but instead to persist in remaining her unlawfully. Article 8 is not a shortcut to compliance with the Immigration Rules, which provides a route for immigration to the UK. Whilst the standard of life including education and career prospects are less favourable than in the UK, that does not justify granting leave to remain. As stated in case authority, the UK cannot be expected to educate the world. Neither can it be expected to host those who simply prefer to be here to join or remain with other family members.

52. Having made these findings and reached these conclusions I return to paragraph 276ADE in relation to the second claimant and further conclude that it would in the circumstances of this case be reasonable to expect the daughter to accompany her mother to Nigeria and thus to leave the UK. As stated, I am not satisfied that there is any genuine relationship with the person alleged to be her natural father and thus no

interference on that account with family life between her and her father. Such limited links there may be between them did not appear to be significant enough for the second claimant to mention them in her two letters to the Tribunal.

53. Mr Jacobs also sought to raise entitlement of the second claimant under the EEA Regulations, as a dependant of the spouse of an EEA national. This was never a ground of application to the Secretary of State nor a ground appeal to the Tribunal. It is a matter that has not been considered by the Secretary of State, but it is open to the second claimant to make any such application as she may consider entitles her to remain in the UK. In any event, in the light of my findings set out above, I am not satisfied that the second claimant is a dependant of the spouse of an EEA national exercising Treaty rights in the UK. For the reasons set out above, even if she is a dependant, which I do not accept, there was insufficient evidence in relation to this issue.

Conclusion & Decision

54. Having considered all the evidence in the round, as a whole, I find that neither claimant meets the requirements of the Immigration Rules. In consideration of their circumstances outside the Rules and in weighing that evidence and my findings of fact in the proportionality balance, the claimants have failed to demonstrate to the low standard of proof required that the decision of the Secretary of State to remove them is either disproportionate, unreasonable, or unjustifiably harsh.

I dismiss the appeal of each claimant on both immigration and human rights grounds.

Signed: Date: 13 November 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I continue the anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeals have been dismissed and thus there can be no fee award.

Signed: Date: 13 November 2014

Deputy Upper Tribunal Judge Pickup