**Upper Tribunal**
**(Immigration and Asylum Chamber)**

Appeal Numbers: IA/20998/2013
IA/21001/2013
IA/21003/2013
IA/21005/2013

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination Promulgated** |
|---|---|
| **On 21 July 2014** | **On 05 August 2014** |

**Before**

**UPPER TRIBUNAL JUDGE PINKERTON**

**Between**

**MRS TINA NKIRU UZODEKWE**
**MR SUNNY OKEY UZODEKWE**
**MASTER JESSEY KELECHI MUNACHIM UZODEKWE**
**MASTER ONYEDIKACHIN DAVIS CHIKA UZODEKWE**
**(ANONYMITY DIRECTIONS NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellants: Ms C Bexson
For the Respondent: Mr I Jarvis

**DETERMINATION AND REASONS**

1. The appellants are all citizens of Nigeria being husband and wife and their two children. They applied for further leave to remain in the United Kingdom under the provisions of paragraph 276ADE of the Immigration Rules, and on human rights grounds. Their applications were refused.

2. The appellants appealed the decision to the First-tier Tribunal (IAC). In a determination promulgated on 30 April 2014 First-tier Tribunal Judge Callender Smith dismissed the appeals under the Immigration Rules and under Article 8 ECHR.

3. The appellants applied for permission to appeal the decision of the judge and permission was granted. It was found arguable that the judge made no or no adequate assessment of whether it was reasonable to expect either or both children to return to Nigeria independently of what should happen to their parents. The judge granting permission went on to state that contrary to what is said at paragraph 5.6 of the grounds the judge did refer to the children not wanting to leave the UK and being well-integrated into the UK and that he was evidently aware that the elder child had been in the UK for nine years. It was arguable, however, that he did not carry through those findings into his conclusions about the best interests of the children, or did not give adequate reasons for his conclusion that it was in the best interests of both children to return to Nigeria with their parents.

**Submissions before me**.

4. Ms Bexson, representing the appellants, submitted that the judge concentrated in the determination on the credibility issue of the parents rather than looking at the best interests of the children. He did not look at their individual rights and failed to deal with the children's interests as a primary consideration. The judge found that both appellants have families to whom on return to Nigeria they could turn for assistance, and the fact-finding on the basis of credibility, or lack of it, created a different dynamic within the appeal, the operation of the Immigration Rules on the key elements of the appeal and, in the final analysis, in the consideration of "stand alone" Article 8 ECHR private or family life rights. Although the judge considered the children's education, that was only part of the assessment that he needed to make. He did not mention the seven year residence point and does not say that it would be reasonable to expect the children to leave the United Kingdom. He makes no assessment of whether it is reasonable for the children to go to Nigeria. The judge spends more time criticising the immigration history of the parents. He did not deal with the evidence of the elder child who wrote a letter saying that he has loads of friends in his school and that if he went to Nigeria he would suffer and the teachers in Nigeria like smacking and hurting students.

5. In his submissions Mr Jarvis provided many authorities. I ascertained that he had given Ms Bexson copies of these and that she did not need time to consider them.

6. Having heard these submissions I announced my decision that I found that there was no material error of law in the determination and that there was no other good reason for the appeals to be reconsidered.

**Reasons for finding that there is no material error**

7. This is a thorough and detailed determination. In essence the judge found that the adult appellants came into the United Kingdom in 2003 with the assistance of an agent. They have never lawfully been here. The judge heard evidence from the adult parents and a witness. For reasons that were open to him the judge found that both adult appellants have families to whom they could turn for assistance on their return to Nigeria. It was one of the crucial findings that needed to be made because the decision on the point would affect consideration of the Article 8 position.

8. The judge correctly identified in paragraph 63 that the best interests of the children need also to be considered in the context of this appeal. The judge found that the children do not want to leave the United Kingdom. This is where they were born and educated and he found that there was objective evidence that the children are well-integrated here. He appreciated clearly that one of the children is now 9 years old and the other is 6 years old. Consideration of the best interests of the children, he stated, is an integral part of the Article 8 balancing exercise and it is also clear that it is a matter that has to be addressed as a distinct inquiry. He directed himself that an "overall assessment" needs to be made and that assessment then needs to be reflected in the wider Article 8(2) proportionality assessment.

9. At paragraph 65 onwards the judge considered the children's education and in particular the effect of any disruption of their current schooling and educational development caused by their removal, their progress and opportunities in the broader sense. He had regard not only to the children's past and present educational setting, but also the setting likely to confront them in Nigeria. He concluded that although the standards and opportunities within the Nigerian system may not be of exactly the same standard as those available to the children at their UK schools, they are not being asked to relocate to a country without a developed secondary education and English, in which they are both fluent, is the medium of instruction in most Nigerian schools. He referred to the case of **MK (best interests of child) India [2011] UKUT 00475 (IAC)** on more than one occasion in the determination and found clear that where there is an educational system, then while there would be disruption on removal to Nigeria it is likely to be temporary and something which each of these children could accommodate given their current skills and accomplishments.

10. The judge concluded that the best interests of the children lie in remaining with their parents and that their parents can reasonably be expected to return to their country of origin, namely Nigeria. He referred to the comments of the Upper Tribunal at paragraph 54 of **MK** and stated that those transpose as well from India as they do to Nigeria.

11. The judge carried those issues over into the wider Article 8 assessment, effectively finding that there would be some short-term disruption to the children's education but that this was outweighed by several factors, including the availability of good education in Nigeria, the family's Nigerian nationality, the fact that they would all be together, and the adults' cultural links with Nigeria. The judge then went on to deal with what he called the "wider assessment".

12. The judge commented that the adult appellants deliberately entered the UK unlawfully and they have worked here unlawfully, paid no taxes or national insurance and have had the benefit of using both the health and the education system parasitically for over ten years. There was no suggestion that they could not have gone on living in Nigeria after their marriage in 2002. Echoing paragraph 57 of **MK** the adult appellants had the means and the stability of a settled life in Nigeria. He did not accept their account to have come here against a background of having been disowned by their respective families because they had married, or in the context of cultural differences. Each adult appellant sought to maintain the same fiction as to their family's circumstances and they have a deceitful and dreadful immigration history.

13. Turning once more to the children and considering matters in the round at paragraph 74, the judge accepted that the children are not to blame for their parents' conduct, but he considered that their parents' poor immigration history added significant weight to the factors weighing against the family's claim to remain in the UK.

14. The judge did not refer specifically to 276ADE (iv) which sets out the requirements to be met by an applicant for leave to remain on the grounds of private life in the UK, where at the date of application the applicant is under the age of 18 years and has lived continuously in the UK for at least seven years, and it would not be reasonable to expect the applicant to leave the UK. The elder child has lived in the UK since birth and is now 9 years old. However, having considered his findings the judge concluded that the best interests of the children lie in remaining with their parents and that their parents can reasonably be expected to return to Nigeria. Although the one child has been in the United Kingdom for more than seven years, although the judge has not said in terms that it would be reasonable to expect him to leave the UK, it is clear enough on the findings that that was indeed his finding. The best interests of the children are a primary consideration but that is not the same as *the* primary consideration, still less the paramount consideration. None of the appellants are British citizens which played such a significant aspect in the case of **ZH (Tanzania) (FC) v SSHD [2011] UKSC 4**.

15. There is little doubt that from the reasoning of the judge he considered that the force of other considerations outweighed the interests of the children in remaining in the United Kingdom. It will be recalled that in the case of **ZH (Tanzania)** the appellant mother was a national of Tanzania

who had two children aged 12 and 9. They were British citizens, but importantly so was their father. There could therefore be no question of removing the father and nor did the Secretary of State have any power to remove the children. The only power open to the Secretary of State was that of removing the mother alone. If, therefore, the children were to stay in the UK they would be separated from their mother. On the other hand, if they followed her to Tanzania they would be separated from their father, unless he chose to go with them, and they would be deprived of the opportunity to grow up in the country of which they were citizens.

16. In this appeal the judge considered the seriousness of difficulties which any of the children might encounter in Nigeria. Although he did not say so in terms, it is clear that he concluded that the family would be returned as a unit and would be returning to extended family members there. **EV (Philippines) and Others v SSHD [2014] EWCA Civ 874** is instructive. This is a case that was heard after these appeals. Lewison LJ at paragraphs 58 to 60 said as follows:-

> "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?
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> 59. On the facts of **ZH** it was not reasonable to expect the children to follow their mother to Tanzania, not least because the family would be separated and the children would be deprived of the right to grow up in the country of which they were citizens.
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> 60. That is a long way from the facts of our case. In our case none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. If the parents are removed, then it is entirely reasonable to expect the children to go with them. As the immigration judge found it is obviously in their best interests to remain with their parents. Although it is, of course a question of fact for the Tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world."

17. Whatever shortcoming there may be in the determination, such as failing to mention the words "primary consideration" or the seven year point referred to above, it is not necessary or desirable for these aspects to be

considered by rote. Little is to be gained by so doing, other perhaps than the greater certainty that a decision will be less prone to a successful appeal.

18. The judge did all that was necessary and took into account the wishes and feelings of the children (or certainly the elder child) and their integration into UK society, their relationship with their parents and their circumstances upon return to Nigeria.

19. Given the particular circumstances of these appeals it is difficult to conclude that the judge could have come to any other decision than the one that he did. There is no lack of reasoning and as I announced at the hearing I can see no error of law which would entitle me to set aside that decision.

**Decision**

20. For the above reasons the decision of the First-tier Tribunal Judge stands and these appeals remain dismissed.

21. No anonymity direction has been made previously and in the particular circumstances of the case I see no particular need for one to be made now.

Signed Date

Upper Tribunal Judge Pinkerton