



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

**Appeal Numbers: IA/48620/2013  
IA/48621/2013  
IA/48622/2013**

**IA/48623/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**On 3 December 2014**

**On 5 December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**OA  
KA  
M1  
M2**

**(ANONYMITY DIRECTIONS MADE)**

Respondents

**Representation:**

For the Appellant: Mr Whitwell (Home Office Presenting Officer)

For the Respondents: Ms Pickup (Counsel)

**DECISION AND REASONS**

1. The appellant ('the SSHD') appeals against a decision of First-tier Tribunal Judge Saunders dated 2 October 2014 in which the respondents' appeals were allowed under Article 8 of the ECHR.

## Background

2. The background to this case can be summarised for the purposes of this appeal. The first and second respondents are the parents of the third and fourth respondents aged 6 and 4 respectively. The parents have been in the UK unlawfully for a lengthy period. The respondents appealed against decisions to remove them dated 4 November 2013. Judge Saunders allowed their appeals and the SSHD has appealed with permission to this Tribunal.
3. The matter therefore now comes before me to decide whether or not the decision contains an error of law.

## Hearing

4. At the hearing Mr Whitwell relied upon the grounds of appeal but focussed his submissions on the Judge's approach to the children's best interests. He reminded me of relevant recent authorities such as **Zoumbas v SSHD** [2013] UKSC 74, **Azimi** [2013] UKUT 00197 (IAC) and **EV (Philippines) v SSHD** [2014] EWCA Civ 874, and invited me to find that the Judge did not sufficiently address aspects relevant to the children's best interests.
5. I did not need to hear from Ms Pickup and indicated that I shall be dismissing the SSHD's appeal.

## Discussion

6. Judge Saunders' determination is undoubtedly a very carefully constructed and detailed one. She made clear and detailed findings of fact concerning each of the respondents [8-12]. The Judge properly directed herself to and applied the relevant legal framework including the provisions of the Immigration Act 2014 relevant to the public interest question [14-19, 23-24]. The Judge considered the children's best interests carefully and gave cogent reasons for finding that each child's best interests are 'very strongly' to remain in the UK [21-22] and removal would be 'highly detrimental' to those interests [24]. The Judge addressed the fourth respondent's circumstances with particular care given his health and developmental delay concerns. The Judge found that it is very clear that without the support he is receiving, which would be unavailable in Nigeria his

educational, emotional and social development will be badly affected at a formative stage of his development. Having considered the best interests of the children, their parents' adverse immigration history and the public interest question pursuant to the Immigration Act 2014 the Judge allowed the respondents' Article 8 appeals.

7. On what basis, in light of that very careful and detailed approach, does the SSHD submit that the Judge has erred in law? The grounds submit that the Judge has failed to provide adequate reasons. As I have already outlined above the Judge has provided very clear and detailed reasons for each of her findings. Contrary to the submissions of the SSHD the Judge has taken into account and attached significant weight to the parents' immigration history [24]. The Judge has also found that the 'family face a number of reasonably significant obstacles in re-establishing themselves in a country in which they have no housing, support or assets' [21], which are particularly serious in light of the fourth respondent's health and medical needs [22].
8. The grounds of appeal also submit that the Judge has failed to take into account **EV (Philippines)** (supra). This is difficult to follow as the Judge expressly directed herself to this case [19]. The Judge has effectively found that it is overwhelmingly not in the children's interests to go to Nigeria. Christopher Clarke LJ acknowledged that in such a case immigration control may not tip the balance. Judge Saunders considered the parents' immigration history but decided it did not tip balance.
9. When granting permission to appeal Judge Levin observed that the Judge may have considered the children's best interests as the primary consideration and not a primary consideration. In my view that observation is unsupported by the manner in which the Judge carefully and expressly reminded herself of the correct approach to best interests and that it will be 'a (but not the) primary consideration' [19].
10. The determination is a detailed and admirable one which sufficiently reasons why in this particular case the public interest in removing the respondents does not outweigh the interference with the children's private life in light of their best interests 'very strongly' favouring remaining in the UK. I am satisfied that when read as a whole the Judge was clearly aware of the fact that the children were not British citizens and were still at a young age and potentially able to adapt to life in Nigeria. The Judge found that in this particular case there was compelling evidence why notwithstanding these matters their

removal to Nigeria would be 'highly detrimental'. She has fully and properly address the children's best interests in light of the principles set out in the authorities drawn to my attention by Mr Whitwell.

**Decision**

11. The decision of the First-tier Tribunal does not contain an error of law and I do not set it aside.

**Anonymity**

12. This decision refers to confidential matters relevant to two young children and I have therefore anonymised the respondents' names.

Signed:

Ms M. Plimmer  
Deputy Judge of the Upper Tribunal

Date:  
3 December 2014