Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/30378/2014
IA/30392/2014
IA/30399/2014
IA/30401/2014
IA/30404/2014

THE IMMIGRATION ACTS

Heard at Field House
On 5 November 2015

Decision and Reasons Promulgated
On 30 November 2015

Before

Lord TURNBULL
Deputy Upper Tribunal Judge MANUELL

Between

(1) Ms F A
(2) Mr I A
(3) Mr O F A
(4) Miss F I A
(5) Miss F O A
~~(NO ANONYMITY DIRECTION MADE)~~

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr J Hawkin, Counsel (instructed by Raffles Haig Solicitors)
For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DETERMINATION AND REASONS

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Introduction

1. The Appellants appealed to the Upper Tribunal with permission granted by Upper Tribunal Judge Knowles QC on 4 August 2015 against the decision and reasons of First-tier Tribunal Judge Turquet who had dismissed the Appellants' appeals against the refusal on 15 July 2014 of their applications for leave to remain outside the Immigration Rules on Article 8 ECHR grounds. The decision and reasons was promulgated on 13 March 2015.

2. The Appellants are nationals of Nigeria, wife, husband and three children, respectively born in Nigeria on 11 April 1982, 19 March 1977 and 10 September 2003 and in the United Kingdom on 8 September 2007 and 1 October 2012. The First, Second and Third Appellants entered the United Kingdom as visitors on 1 December 2006, with leave until 26 April 2007. They overstayed. There followed a series of applications and litigation which is described in [1] of Judge Turquet's determination. On 15 July 2014 the Secretary of State refused the applications and made removal directions which are the subject of the present appeal.

3. The judge found that the Appellants were unable to satisfy the requirements of Appendix FM and paragraph 276ADE of the Immigration Rules and further found that there were no compelling circumstances requiring an Article 8 ECHR assessment outside the Immigration Rules. The judge nevertheless considered the claim on Razgar [2004] UKHL 27 principles in conjunction with sections 117A-D of the Nationality, Immigration and Asylum Act 2002. The judge found in summary that the Appellants had not lost their ties to Nigeria, that the minor Appellants' best interests were to return to Nigeria with their parents where their education could continue and hence that the removal of all of the Appellants was proportionate.

4. Permission to appeal was refused by First-tier Tribunal Judge Andrew on 1 June 2015 but was granted by Upper Tribunal Judge Knowles QC on the renewed application because she considered that arguments raised on the Appellants' behalf deserved further consideration. These were that the judge should have considered finding that the Secretary of State's decisions were unlawful for failure to consider the best interests of the three children, had misapplied paragraph 276ADE(iv) with reference to Ogundimu (Article 8 – new Rules) Nigeria [2013] UKUT 60 (IAC), had insufficiently considered the evidence and had failed to take account of section 117B(6) of the Nationality, Immigration and Asylum Act 2002.

5. Standard directions were made by the tribunal, indicating that the appeal would be reheard immediately in the event that a material error of law was found.

6. The Respondent filed a rule 24 notice in the form of a letter dated 19 August 2015 indicating that the onwards appeal was opposed because the judge had directed herself appropriately.

Submissions

7. Mr Hawkin for the Appellants relied on the renewed grounds on which permission to appeal had been granted by the Upper Tribunal. He submitted that the judge should have sent the decisions back to the Secretary of State because there had been no proper consideration of the best interests of the children, such as their ties in the United Kingdom and their own wishes. That was contrary to JO and Others (section 55 duty) Nigeria [2015] UKUT 00517 (IAC). There had been no consideration of the evidence of the two older children's assistant head teacher. The judge had not followed Ogundimu (Article 8 – new Rules) Nigeria [2013] UKUT 60 (IAC) when considering ties to Nigeria under paragraph 276ADE(vi) of the Immigration Rules. The judge's consideration of paragraph 276ADE(iv) was also flawed. The judge had failed to recognise that both the Third Appellant and Fourth Appellant had been in the United Kingdom in excess of 7 years. The judge's consideration of section 55 of the Borders, Citizenship and Immigration Act 2009 was as flawed as that of the Secretary of State, for similar reasons. The judge's consideration of Article 8 ECHR was undermined for the same reasons as well as by her treatment of section 117B of the Nationality, Immigration and Asylum Act 2002, which was cursory. The substance of the determination was poor and its material errors of law warranted the setting aside and remaking of the decision.

8. Ms Willocks-Briscoe for the Respondent relied on the rule 24 notice. She submitted that there was no error of law and the determination should stand. The determination had to read as a whole. The position of the parents was the correct starting point and the judge had given a properly reasoned decision which was open to her. The onwards appeal should be dismissed.

9. In reply, Mr Hawkin submitted that the judge should have given greater weight to the presence of two of the children for 7 years or more. The judge had not considered the objective evidence concerning education in Nigeria, including the use of corporal punishment. There were also language issues. The determination was wholly inadequate.

10. The tribunal indicated at the conclusion of submissions that it found that there was no material error of law and reserved its determination, which now follows.

No error of law finding

11. In the tribunal's view the grant of permission to appeal can best be described as generous. Mr Hawkin's repetitious and somewhat circular submissions were based on a misreading of a careful and full determination, which had dealt satisfactorily with all live issues, following the correct application of the relevant law.

12. The judge dealt with the submissions based on JO (above) at [3] of her decision, and gave sustainable reasons for finding that the Secretary of State had dealt with the best interests of the child Appellants. In reaching that finding the judge had shown that she was fully aware of the case advanced on behalf of the Appellants as well as the supporting evidence. Sending decisions back to the Secretary of State should, of course, be done with circumspection and normally AJ (India) [2011] EWCA Civ 1191 should be followed.

13. The judge found that the children lived in a household where Yoruba was spoken and that the children would in any event be educated in English in Nigeria. The judge found that the children's parents would readily re-integrate in Nigeria, where they had close relatives (including a mother and a brother) as well as friends and extended family, and where they would be able to find work. It is trite law that the judge did not have to deal with every single item of evidence and her reference to the evidence provided by the children's teachers in the United Kingdom was adequate.

14. The judge recognised the importance of the children's position and gave it close attention, having cited and correctly explained key cases such as Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT00197 (IAC) and EV (Philippines) [2014] EWCA Civ 874. The judge weighed the relevant factors (see, e.g., [33] of her decision) and gave sustainable reasons for finding that the children's best interests were to return or go to Nigeria with their parents. In reaching that finding the judge accepted that the education available in the United Kingdom might be of a higher standard. That was not in serious dispute. Nor was the love, devotion and competence of the children's parents. There was no need for the judge to conduct an examination of educational practice in Nigeria. The judge was well aware that the children did not want to leave their schools and their friends in the United Kingdom and that the children's parents bore responsibility for what had happened.

15. The judge followed the substance of Ogundimu (above). There was ample evidence of strong ties to Nigeria as already noted. Her findings were secure. Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 was anticipated by paragraph 276ADE(iv) of the Immigration Rules. The judge had addressed that in sufficient detail: see AM (S 117B) Malawi [2015] UKUT 0260 (IAC). There was no need for a duplicated review, when the judge had covered the same ground at least once previously and had in effect cross-checked her conclusions.

16. Indeed, given the facts of the appeals, it is not easy to see how any judge properly directing himself or herself as Judge Turquet certainly did could have reached a different decision. The tribunal accordingly finds that there was no material error of law in the decision and reasons and there is no basis for interfering with the judge's decision.

DECISION

The Appellants' onwards appeals are dismissed

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

Signed **Dated**

Deputy Upper Tribunal Judge Manuell