Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: IA/35630/2014**
IA/35631/2014
IA/35636/2014
IA/35638/2014
IA/35639/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 11 August 2015	**On 14 August 2015**

Before

UPPER TRIBUNAL CHALKLEY
DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

(1) I G
(2) C G
(3) S G
(4) C G
(5) N G

(ANONYMITY ORDER MADE)

Respondents

Representation:

For the Respondent: Mr Olawanle, Solicitor.
For the Appellant: Mr Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This matter comes before us for consideration as to whether or not there is a material error of law in the determination of First-tier Tribunal Judge Froom ("the FTTJ") promulgated on 30 March 2015, in which he allowed the Appellants' appeals against the refusal of their applications for leave to remain on human rights grounds. He did so to the limited extent that the decisions were not in accordance with the law. The Appellants'

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applications had been made on 23 November 2012. They were refused on 27 November 2013 but reconsidered with fresh decisions being made on 27 August 2014.

2. For ease of reference and continuity, throughout this decision we maintain the nomenclature of the parties as Appellants and Respondent, as set out in the FTTJ's decision.

3. Whilst no anonymity direction was made in the First-tier Tribunal, we make such a direction now because three of the Appellants are minors.

4. The Respondent considered the human rights applications under the Immigration Rules. In relation to the Third Appellant, who was born in the UK on 28 September 2005, and was therefore over the age of 7 at the date of application, the Respondent decided that, in accordance with paragraph 276ADE(1)(iv), "it would not be unreasonable to expect [her] to leave the UK" within the family unit.

5. It was agreed by the parties' representatives before us that the FTTJ had erroneously applied the incorrect version of paragraph 276ADE(1)(iv) which did not include that test of reasonableness. We agree with this analysis and find that the decision of the FTTJ contained a material error of law in that he applied the former version of paragraph 276ADE(1)(iv) insofar as the Third Appellant was concerned and allowed the appeals of all the Appellants "to the limited extent that the decision made is not in accordance with the law and the case remains outstanding before the respondent to make a lawful decision".

6. There being no challenge to the Judge's findings of fact as regards the circumstances of the Appellants, we invited submissions on whether the issue of reasonableness could be decided by us, particularly given the significant delays with listing in the FTT. Mr Jarvis agreed that it would be appropriate for us to do so and Mr Olawanle did not demur. We therefore heard their substantive submissions on this issue.

7. Mr Jarvis submitted that the reasonableness test in paragraph 276ADE(1)(iv) was akin to the proportionality assessment under Article 8; the issue was not solely the personal circumstances of the child but also the surrounding circumstances of other family members in the UK and the country of return. He referred to the facts found by the FTTJ and particularly paragraph 23 to the effect that there were no significant obstacles to the return of the First and Second Appellants (the Second Appellants' parents). These findings had not been challenged by the Appellants. The parents were, he said, resourceful; there were no health or language issues for any of the family; there were no nationality issues or any difficulties obtaining documents for return. He cited **EV (Philippines) and Others v SSHD [2014] EWCA Civ 874.** He accepted

there would be disruption to the Third Appellant's life but asserted she was relatively young and could adapt. Whilst the poor immigration history of the parents should not be affixed to the child, it was a factor to be considered (**MK (best interests of child) India [2011] UKUT 00475 (IAC)**). Paragraph 22 of the FTTJ's decision was also relevant in that he had found the parents had set out to mislead the Tribunal in the past and had been unlawfully employed in the UK. There was significant public interest in removal. He reiterated that no blame could attach to the children for the misdemeanours of the parents; however, the public interest was such that the children should be relocated with their parents. This was not a situation where there were, he said, compelling circumstances such that the matter should be considered outside the Rules: even if the qualifying child had had leave to remain, the Secretary of State would argue that it was reasonable overall and proportionate for the child to be removed to Nigeria within the family unit.

8. For his part, Mr Olawanle submitted that the Third Appellant had been born in the UK, had lived here all her life and would reach the age of ten next month. It had not been part of the FTTJ's consideration but the child would be entitled to British citizenship next month. He advocated a common sense approach: it was not reasonable to remove a child who would become British the following month. He also referred us to paragraphs 33-35 of **EV (Philippines)**. He submitted the child's best interests were to be determined by reference to the child alone but accepted her best interests included remaining with her parents. He also relied on the guidance in **Azimi-Moayed & Ors (decisions affecting children; onward appeals) [2013] UKUT 197 (IAC):** the child's years in the UK after the age of four were significant because she had integrated into UK society and had developed a life outside the family unit. He sought to distinguish the principles in **Zoumbas v SSHD [2013] UKSC 74,** but accepted that, in the present case, the family had benefitted from education and health provision in the UK. He noted that the Third Appellant spoke only English, not her parents' native language. Whilst he accepted that the findings of the FTTJ as to the family's circumstances had not been challenged before us, he said that they were a matter of opinion and incorrect.

9. We make the following findings with regard to the Third Appellant. She is now aged nine and was born in the UK; she has lived here all her life, never having visited Nigeria. She is being educated here and has friends in the UK outside her family. She has her tenth birthday on 28 September 2015 and will be entitled to apply for British citizenship as a result. She cannot be blamed for her parents' poor immigration history: they have been overstayers for almost the entire period of their stay in the UK.

10. Mr Olawanle accepted that it was in the best interests of the Third Appellant to remain with her parents and we endorse that. It is also in her best interests to remain within the family unit within which she has grown

up, in her current school and within her current friendship group. We fully accept the Third Appellant is not to be blamed for the poor immigration history of her parents or their attempts to deceive the First-tier Tribunal and indeed the Respondent.

11. The Judge did not accept the parents had no ties to Nigeria; he found they had close family members there and that, even if some of their relatives had moved aboard, they could assist the Appellants to re-establish themselves. He noted the Second Appellant had previously had a shop there and had worked unlawfully in the UK. He further noted the Second Appellant was resourceful and had a range of skills which could be put to good use in Nigeria. The FTTJ considered the family could stay with relatives in Nigeria until they got back on their feet or rented a new place. None of the family has health problems.

12. The Judge found that there were no significant obstacles to the First and Second Appellant's integration into Nigeria (his paragraph 23). The two youngest children of the family are aged 6 and 4 and do not therefore fulfil the criteria in paragraph 276ADE(1) insofar as their private lives are concerned. Thus, insofar as the child's parents and siblings are concerned, they do not fulfil the criteria in the Immigration Rules insofar as their Article 8 rights are concerned. Their removal would not be in breach of the Immigration Rules. It follows that, if the Third Appellant were to be removed, that removal would be as part of the family unit and to a country where there are no very significant obstacles to her parents' integration.

13. We bear in mind Lady Hale's comments in **ZH (Tanzania) (FC) (Appellant) v Secretary of State for the Home Department (Respondent) [2011] UKSC 4** in which she said that "Although nationality is not a "trump card" it is of particular importance in assessing the best interests of any child". In the present case, the Third Appellant is not a British citizen but, that said, she would become entitled to apply for British citizenship next month. Since this was not challenged by Mr Jarvis, we proceed on the basis that she would be granted such citizenship in due course.

14. We accept that the removal of the Third Appellant would entail disruption to her education and her social life. She would also lose the opportunity of gaining British nationality. That loss would not be in her best interests. However, given that she would be removed with her parents and siblings and that her parents would be able to provide for the family in Nigeria, her country of current nationality, we consider that it would not be unreasonable to expect her to leave the UK with her family, notwithstanding the significant disruption to her private life. The Third Appellant is a healthy child and her parents would assist her in adjusting to life in Nigeria. She would continue her education and have access to

healthcare, albeit, in both cases, not to the standard she might have received in the UK. She would have the support and assistance of extended family in Nigeria. We accept that she has never been to Nigeria and that she would find the transition difficult in the short term, particularly with the loss of personal contact with friends and school. However she would be able to maintain some contact with friends in the UK via the internet, telephone, text and visits. It is also relevant that she has grown up in a Nigerian family and thus, to some extent, she is familiar with Nigerian customs and culture; this will assist her in settling into life in Nigeria.

15. For these reasons we find the Respondent's decision is not in breach of paragraph 276(1)(iv) insofar as the Third Appellant is concerned. Nor, on the findings of the FTTJ, are the decisions in relation to the remaining Appellants in breach of paragraph 276ADE(1).

16. We have also considered whether the decisions place the United Kingdom in breach of Article 8. To that end, we bear in mind the principles in **R (Oludoyi & Ors) v SSHD (Article 8 – MM (Lebanon) and Nagre) IJR [2014] UKUT 00539 (IAC)**. We consider that the evidence has been considered adequately under the Immigration Rules insofar as all Appellants are concerned. There is nothing to suggest that, had the appeals been considered in accordance with the Article 8 jurisprudence, either by the FTTJ or this Tribunal, the appeals would have been successful.

17. We set aside the decision of the FTTJ and remake it dismissing the appeals on the grounds that the Appellants do not fulfil the criteria in paragraph 276ADE(1) of the Immigration Rules or on human rights grounds.

Decision

18. The making of the decision of the First-tier Tribunal did involve an error on a point of law.

19. We set aside the decision.

20. We re-make the decision in the appeals by dismissing them.

Angela M Black

Date 12 August 2015

Deputy Upper Tribunal Judge A M Black

Anonymity Direction

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Fee Award

The FTTJ did not make fee awards and, given our decision, that remains appropriate.

Angela M Black

Date 12 August 2015

Deputy Upper Tribunal Judge A M Black