Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/41087/2014
IA/41091/2014
IA/41093/2014
IA/41098/2014

THE IMMIGRATION ACTS

Heard at: Field House
On: 7th July 2015

Decision and Reasons Promulgated
On: 9th October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

Dr Y
Mrs A
Master A
Miss A
(anonymity direction made)

Respondents

For the Appellant: Mr Jarvis, Senior Home Office Presenting Officer
For the Respondent: Mr MacKenzie, Counsel instructed by Legal Rights Partnership

DECISION AND REASONS

1. The Respondents are all nationals of Nigeria. They are respectively a husband, wife and their two minor children. On the 9th July 2014 the First-tier Tribunal (Judge Lagunju) allowed their linked appeals against

decisions to remove them from the United Kingdom under s10 of the Immigration and Asylum Act 1999. The Secretary of State now has permission[1] to appeal against that decision.

Background and Matter in Issue

2. This case concerns a family who applied for leave to remain in the United Kingdom on 'private life' grounds. Their applications were made on the 8th September 2014 and so fell to be considered under the 'new rules', in particular paragraph 276ADE:

> 276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
>
> (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and
>
> (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
>
> (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
>
> (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or
>
> (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or
>
> (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK

3. The adult applicants submitted that the conflict in Northern Nigeria presented significant obstacles to their reintegration: they relied on sub-paragraph (vi). In respect of the children reliance was placed on the fact that the two children (and their younger sister M) were born in the UK and have never lived anywhere else. The eldest child Miss A was born on the 24 March 2006 and so at the date of the application was aged 8 years and 6 months. She therefore fell for consideration under sub-paragraph (iv).

[1] Permission granted by First-tier Tribunal Judge Kelly on the 6th May 2015

4. The First-tier Tribunal allowed all four appeals. The appeals of the First, Second and Third Respondents were allowed under 276ADE(1)(vi), that of the Fourth under 276ADE(1)(iv). All four appeals were further allowed with reference to Article 8 'outside of the Rules'.

5. The Secretary of State now challenges these decisions under the Rules on the unhelpfully vague ground that the "Judge erred in finding that the appellants meet the requirements of 276ADE". Where the grounds do particularise it is rather haphazard, but in the course of submissions it became clear that the complaint has two strands:

   i) In respect of 276ADE(1)(vi) the First-tier Tribunal has misdirected itself and has made findings not based on the evidence before it;

   ii) In respect of 276ADE(1)(iv) the First-tier Tribunal has failed to give the proper interpretation to the term "reasonable".

6. As to Article 8 the grounds submit that the Judge has "failed to identify any unduly harsh consequences" for the family should they be removed. Reference is further made to Zoumbas and EV (Philippines) to the effect that it is not unreasonable to expect children to relocate with their families if their parents have no leave to remain.

7. The reasoning of the First-tier Tribunal, the challenge to it and my findings are most conveniently addressed in order of the matters in issue.

Issue 1: 'very significant obstacles to reintegration'

8. First-tier Tribunal Judge Lagunju agreed with the Secretary of State that neither adult could succeed under Appendix FM. She was however apparently satisfied that they could meet the requirements of paragraph 276ADE(1)(vi):

> "I find due to the unrest caused by the regular attacks by the renowned Islamic terrorist group Boko Haram, there would be significant obstacles to integration on return. Due to the general unrest in their home area, I find there would be obstacles to securing employment and generally settling into life in Nigeria"

9. The Secretary of State's first challenge to that finding is that there was no evidential basis to conclude that the activities of Boko Haram would somehow impede either adult from obtaining employment. The second is more fundamental: the Secretary of State submits that there is no lawful precedent for limiting consideration of the prospects of reintegration to the home area. This family may originate from Northern Nigeria but there is nothing to prevent them going to live somewhere else, for instance in Abuja or Lagos.

10. The Respondents' Rule 24 response does not address this ground. In his submissions Mr MacKenzie submitted that there was copious evidence before the First-tier Tribunal relating to the conflict in Northern Nigeria

and that it was therefore open to the Judge to infer from this material that it would present an obstacle to the family's resettlement. As to where they might resettle, the existence of that conflict was plainly relevant to consideration of 276ADE(1)(vi).

11. I find that this ground of appeal is made out. The First-tier Tribunal did not apply the correct test under 276ADE(1)(vi). The rule reads:

> '(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK'

12. This requires there to be *very* significant obstacles to the applicant's integration into his *country* of origin. It would appear from paragraph 24 of the determination that the Tribunal only considered whether there were significant obstacles to the family's integration back into the Northern Nigerian state from which they originally came.

13. Mr MacKenzie submitted that there was no analogous 'internal flight' principle when considering 276ADE. I do not agree. That is because the rule itself requires the applicant to demonstrate the obstacles in respect of the *country*, not just a part of it. The obstacles identified in this determination are confined to the Judge's concern about the prospect of this young family resettling in an area where they might be affected by the activities of Boko Haram. Those were perfectly legitimate concerns, but he should not have stopped there. The rule requires a holistic assessment of the situation upon return to the country of origin, not just a particular part of it. For that reason the reasoning in respect of the application of 276ADE to the adult Respondents must be set aside.

14. I would add that at paragraphs 30-32 the determination appears to conclude that the Master A also meets the requirements of 276ADE. This is said to be because there are significant obstacles to his integration, apparently an application of 276ADE(1)(vi). That provision could not possibly have applied to him since he was at the date of decision only six years old. That decision must too be set aside.

Issue 2: the meaning of 'reasonable' in 276ADE(1)(iv)

15. In respect of Miss A the relevant provision was sub-section (iv):

> '(iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK;'

16. In a letter dated the 26th September 2014 the Secretary of State had set out her case as follows:

> "... although she is under 18 and has lived in the UK for 7 years it is deemed reasonable for her to leave the UK with her family. As she is still at a young age where she can adapt to life in another country…
>
> While she has spent his (*sic*) first 8 years in the UK, young children can adapt to new circumstances, and at that age her private life will be quite insular (parents and home). The Country of Origin Information (COI) Report for Nigeria dated 11 June 2013 states 'The Nigeria section of Europa World accessed 18 December 2012 undated, stated that primary education begins at six years of age and lasts for six years. Secondary education begins at 12 years of age and lasts for a further six years. Education to junior secondary level (from six to 15 years of age) is free and compulsory'. There is education available in Nigeria for her and her siblings, although not of the same standard as that available in the UK, furthermore the child would have the same family support as that available in the UK.
>
> …
>
> Ultimately your client and her partner will be able to provide all the support their children require there, knowing the language and culture of that country. The children are young enough to adapt to life in Nigeria with their parents. Their material quality of life there might not be to the same standard as what is in the United Kingdom, but that alone is not a significant enough factor to justify allowing them to remain in this country. There might be some initial minor disruption to the children's private life, but it is considered that this will be reasonable vis-à-vis the legitimate aim of immigration control and economic well-being of the United Kingdom".

17. The only matter in issue was therefore whether it was "reasonable" for Miss A to go to Nigeria. In approaching this question the First-tier Tribunal noted [at 25] that the children were entirely unfamiliar with the cultures and customs of that country. It was further noted that the benchmark of seven years residence has assumed significance not just in the Rules themselves, but in the jurisprudence relating to Article 8: reference is for instance made to Azimi-Moeyed (decisions affecting children, onward appeals) [2013] UKUT. That she had passed that "notable period of time" in the UK was therefore a "weighty consideration". Miss A (and indeed her brother who was by then approaching the seven year mark) had established their own ties to the

UK and were flourishing at school. Miss A had developed a keen interest in swimming and other extra-curricular activities. Here Judge Lagunju again mentioned Boko Haram and their hostility towards the education of women as a relevant factor. The potential disruption to her education would have long-term detrimental affects on her well-being and development. In conclusion it is found that it would not be reasonable to expect her to leave the United Kingdom: "it is likely that she has already put down roots, formed her own personal identity, made links with the community and solidified friendships in the UK".

18. Of this the grounds of appeal simply say that the Judge "erred". Before me Mr Jarvis expanded on this to submit that the Judge had taken the wrong approach to what 'reasonable' meant. The determination considers in some detail the quality of Miss A's life in the UK and touches on what her life might be like in Nigeria. It is not evident however that the Tribunal weighed into the balance any of the countervailing factors, such as the principle that it was in the public interest to remove persons with no leave to remain. Mr Jarvis said that it was the Secretary of State's position that "reasonable" was to be equated with "proportionate". The Judge had been required to weigh against Miss A the fact that neither she nor her parents had any leave to remain.

19. Having heard Mr Jarvis' submissions I was bound to point out that they were substantially at odds with the submissions I had heard from the Secretary of State in other cases on this exact point, where it had expressly been agreed that "reasonable" was not to be equated with "proportionate" in the Article 8 sense. I referred Mr Jarvis to the current guidance, the Immigration Directorate Instruction 'Family Migration: Appendix FM Section 1.0b *Family Life (as a Partner or Parent) and Private Life: 10-Year Routes'* ("the IDI") which appears to place a good deal of weight on the private life of a child with seven years or more residence, and stipulates that where this benchmark has been reached, "strong reasons" would be required to refuse leave to remain:

> <u>11.2.4. Would it be unreasonable to expect a non-British Citizen child to leave the UK?</u>
>
> The requirement that a non-British Citizen child has lived in the UK for a continuous period of at least the 7 years immediately preceding the date of application, recognises that over time children start to put down roots and integrate into life in the UK, to the extent that being required to leave the UK may be unreasonable. The longer the child has resided in the UK, the more the balance will begin to swing in terms of it being unreasonable to expect the child to leave the UK, and *strong reasons will be required in order to refuse a case with continuous UK residence of more than 7 years.*

> The decision maker must consider whether, in the specific circumstances of th§e case, it would be reasonable to expect the child to live in another country.
>
> The decision maker must consider the facts relating to each child in the UK in the family individually, and also consider all the facts relating to the family as a whole. The decision maker should also engage with any specific issues explicitly raised by the family, by each child or on behalf of each child.
>
> [Emphasis added]

20. This guidance is suggestive of a presumption that where the child had reached the relevant length of residence, she gets to stay. Decision-makers are then required to weigh into the balance countervailing factors in order to determine whether these amount to "strong reasons" capable of outweighing the child's private life rights: if the test was the 'classic' Article 8 question of proportionality, it would be the public interest which would weigh heavily and it would be for the child to provide strong reasons why she should stay. That is the difference between the test under the Rules, and that outside of the Rules. Mr MacKenzie submitted that it would be rather self-defeating if an application under 276ADE(1)(iv) could be rejected simply by pointing to the public interest in removing persons with no leave to remain, since it can be presumed that no-one *with* leave to remain would be making such an application.

21. Mr Jarvis requested further time to take instructions on this point. I agreed to accept submissions in writing.

22. Those submissions were received by email on the 16th July 2015. Therein Secretary of State maintains that "reasonable" means "proportionate", but not in the sense that it is commonly understood in Article 8 appeals:

> "... the fact the [Secretary of State] places emphasis upon the child's long residence in the guidance quoted has no material bearing on the question of what the correct legal approach is. Paragraph 11.2.4 as quoted above, merely reflects the [Secretary of State]'s acceptance of the weight that will be given to the child's long residence which itself is a necessary requirement for entry into the second part of the sub-section: the assessment of reasonableness"

Having referred to Haleemudeen and McLarty the submissions go on:

> "Proportionality is therefore to be understood as the *approach* to be taken rather than the test to be applied. It is not therefore to be conflated with the test of compelling circumstances outside of the Rules (which is itself conducted through a proportionality exercise). It is of course obvious that the examination of reasonableness takes place within the Rules

> themselves (276ADE(1)(iv)) which means that there is no requirement for the A to show compelling factors. In other words the starting point for the examination of "reasonableness" is not predicated upon failure under the Rules as is the case with an assessment of "compelling" outside of the Rules [see for instance PG (USA) v SSHD [2015] EWCA Civ 118"

23. The Secretary of State does not accept that she has made contradictory submissions in other appeals: she has consistently maintained that the question must be approached holistically, taking all relevant factors into account. Particular emphasis should have been placed, for instance, on the serious countervailing effect of illegal working in the UK. A comprehensive consideration of all relevant factors would make the decision compliant with the Secretary of State's obligations under s55 of the Borders, Citizenship and Immigration Act 2009.

24. These submissions were a helpful clarification of the Secretary of State's position. I have taken them into account in determining what 'reasonable' means within the context of the Rule, and in turn whether it can be found that the First-tier Tribunal erred in its approach.

25. I start by considering the Rule itself. There are four alternative provisions contained within the rule. Two of them simply require a period of residence: any applicant who has had 20 years continuous residence or a young person between the age of 18 and 25 who has spent at least half of his life in the UK will *prima facie* succeed. Whether they do will depend of whether they meet the 'suitability requirements' set out in S-LTR 1.1-2.3 and S-LTR 2.3 and 3.1. So, for instance, the applicant who arrived on her 9th birthday and made an application the week after she turned 18 could only succeed if she does not fall foul of any of those diverse criteria set out in Appendix FM (matters failing under the heading 'suitability' range from being under a deportation order to failing without good reason to attend an interview). On the face of it the 'residence' provisions set down the minimum requirements for strength of private life needed to engage the UK's responsibility, whilst the 'suitability' requirements are the countervailing matters that that Secretary of State considers must weigh against an applicant. That suggests that if anywhere, 276ADE1(i) is where the decision-maker is invited to weigh in the public interest.

26. The two remaining alternatives within 276ADE are (iv), pertaining to children, and (vi), applicable to those adults who have neither the qualification by way of age nor long residence to immediately found a claim under 'private life'. The Secretary of State has consistently emphasised the high threshold inherent in (vi). An adult applicant who cannot show that he has been here for a sufficiently long period of time must instead show that there would be "very significant obstacles to the

applicant's integration into the country to which he would have to go if required to leave the UK". That reflects the Secretary of State's view that an adult who has not been here for a very long period will ordinarily be expected to give up any private life that he has managed to establish in that time and re-establish a new one somewhere else. The rule requires such an adult to give very weighty reasons why his private life in the UK has assumed a greater significance than it would otherwise be afforded. The high threshold therefore applies to whether Article 8(1) rights are even engaged; as with other applicants under the Rule, the public interest is only found in the Appendix FM suitability requirements.

27. That leaves children, who must now show a set period of long residence *and* that it would not be reasonable to expect them to leave the UK. Given the structure of the rest of the paragraph there would not appear to be any rationale for weighing additional public interest factors against the child. If the requirement is to be read in the context of the rule as a whole, 'reasonable', as in 'very significant obstacles to integration' goes to strength of private life, rather than the public interest factors which militate against leave being granted. I would suggest that as with all other 'private life' applicants, these are contained in Appendix FM.

28. In respect of the Secretary of State's submission that her current guidance simply serves to underline the weight to be attached to a residence of seven years or more, this has little merit. The Secretary of State does not need to give guidance on how to interpret the first limb of the provision: either the child has been here for seven years or she hasn't. That the guidance is directed at the second limb is evident from the heading. That is not to say however, that the long residence itself has no significance in determining the approach to be taken to the term 'reasonable'.

29. The genesis of the 'seven year provision' was the concession known as DP5/96. That policy, and those which followed, created a general, but rebuttable, presumption that enforcement action would "not normally" proceed in cases where a child was born here and had lived continuously to the age of 7 or over, or where, having come to the United Kingdom at an early age, 7 years or more of continuous residence had been accumulated [2]. As the policy statement [3] which accompanied the introduction of paragraph 276ADE (1)(iv) puts it: "a period of 7 continuous years spent in the UK as a child will generally establish a sufficient level of integration for family and private life to exist such that removal *would normally not be in the best interests of the child*" [my emphasis]. As I set out above, the current guidance reaffirms that this is the starting point for consideration of the rule. Numerous ministerial statements over the years have maintained the government's position as to

[2] For a detailed history of the rule and its development see Dyson LH in Munir v SSHD [2012] UKSC 32 paras 9-13
[3] The Grounds of Compatibility with Article 8 of the ECHR: Statement by the Home Office (13 June 2012) at 27.

its significance. A recent example is the speech of Lord Wallace of Tankerness in the debate in the House of Lords on the introduction of section 117B (6) NIAA 2002 by way of the amendments in the Immigration Act 2014:

> "we have acknowledged that if a child has reached the age of seven, he or she will have moved beyond simply having his or her needs met by the parents. The child will be part of the education system and may be developing social networks and connections beyond the parents and home. However, a child who has not spent seven years in the United Kingdom either will be relatively young and able to adapt, or if they are older, will be likely to have spent their earlier years in their country of origin or another country. When considering the best interests of the child, the fact of citizenship is important but so is the fact that the child has spent a large part of his or her childhood in the United Kingdom"[4].

30. There is then a considerable body of opinion leaning towards the same interpretation of 276ADE(1)(iv). The historical roots of this provision, the case-law, Ministerial statements and current policy documents all recognise that after a period of seven years residence a child will have forged strong links with the UK to the extent that he or she will have an established private life outside of the immediate embrace of his parents and siblings. It is, as Mr Jarvis notes, that private life which is the starting point for consideration under this Rule. The relationships and understanding of life that a child develops as he grows older are matters which in themselves attract weight. The fact that the child might be able to adapt to life elsewhere is *a* relevant factor but it cannot be determinative, since exclusive focus on that question would obscure the fact that for such a child, his "private life" in the UK is everything he knows. That is the starting point, and the task of the Tribunal, as it has always been, is to then look to other factors to decide whether, on the particular facts of the case, these displace or outweigh the presumption in favour of leave to remain. Those factors are wide-ranging and varied. The IDI gives several examples including, for instance, the child's health, whether his parents have leave, the extent of family connections to the country of proposed return. The assessment of what is "reasonable" will call for the decision-maker to weigh such matters into the balance and to see whether they constitute "strong reasons" - the language of the current IDI – to proceed with removal notwithstanding the established Article 8 rights of the child in the UK. The fact that a child's parents might have overstayed, entered or worked illegally or sought to evade immigration control might all be

[4] At column 1383, Hansard 5th March 2014

thought pertinent to the assessment of 'strong reasons'. Whether they amount to such in any given case would depend on the facts.

31. The reasoning of the First-tier Tribunal in this case is set out at paragraph 17 above. The determination gives careful consideration to the depth and quality of Miss A's private life, and to the substantial disruption likely to be caused by removal to Nigeria. In respect of Boko Haram and the conflict in the North Mr Jarvis submitted that this was an irrelevant factor, as it had been for the purpose of 276ADE (1)(vi). I do not agree. This is a different test. The fact that this family will be internally displaced upon return will certainly be *an* obstacle, but not necessarily a "very significant one". It must however be relevant to a holistic assessment of what is "reasonable". I find that this was a matter that the Tribunal was entitled to take into account. What the determination does not do is to consider whether there are any countervailing factors. For the reasons set out above, this is an error of law. I set the decision aside with findings of fact preserved.

The Re-Made Decisions

32. The best interests of the child being of primary concern, my starting point is Miss A: s55 of the Borders, Citizenship and Immigration Act 2009.

33. It is accepted that Miss A has lived in this country continuously since she was born on the 24th March 2006. She is now aged 9 years and 7 months and is therefore a 'qualifying child'. I adopt the findings of the First-tier Tribunal about the strength and quality of her private life in the UK.

34. I now consider whether there are strong reasons why, notwithstanding that established private life, it would be reasonable to expect Miss A to leave the UK. There is no evidence of any criminality on the part of any of the Appellants. The Secretary of State's submissions suggest that one or more of the adults have been working without permission but I can find no reference to this in either the determination or the refusal letter, and I have not been directed to any evidence to suggest that this is so. Dr Y does refer in his witness statement to having written some research papers and having attended various conferences but it is not clear whether he has been paid for either. It would seem that for most of the time he has spent in the UK he has been studying as a privately paying international student, having been awarded his Masters degree and then his PhD. What is clear is that Dr Y has not had valid leave for much of the time he has spent in the UK. Having arrived in 2005 with leave to enter as a Tier 4 (General) Student Migrant he failed to apply to vary that leave before it expired in January 2009. It was perhaps for that reason that subsequent, late, applications for leave 'outside of the Rules' failed. I am told that in 2011, having made four attempts to regularise his position, he was granted discretionary leave with no restriction on employment. That leave expired

on the 31st August 2011 and he has had no leave since. Between August 2011 and August 2014 it would seem that he made a series of representations to the Secretary of State in order to secure an immigration decision which would confer a right of appeal, which he finally got on the 12 August 2014 when the Secretary of State made removal directions. The family have therefore spent two periods in the UK with no valid leave. I have given weight to that matter, and to the fact that the First, Second and Third Respondents do not currently qualify for leave to remain under any of the Immigration Rules. Having done so I am satisfied that there are not, in this case, sufficiently weighty reasons to justify interference with the well-established private life of Miss A (and her siblings). I therefore allow Miss A's appeal with reference to paragraph 276ADE(1)(iv) of the Immigration Rules.

35. In respect of the adult Appellants Mr MacKenzie relies on 276ADE(1)(vi) and Article 8 outside of the Rules. For the reasons I allude to above, I am not satisfied that the high test in the Rules can be made out. The adult Appellants are both educated and have spent most of their lives in Nigeria. I accept that they are unlikely to choose to resettle in the north of the country where the civilian population are facing substantial difficulties with the activities of Boko Haram and its conflict with the Nigerian armed forces. The family could however settle in another part of Nigeria, for instance in Abuja or Lagos. No evidence has been adduced to demonstrate that there would be "very significant obstacles" to the integrating into one of these large cities.

36. Turning to Article 8 outside the Rules I note that 276ADE(1)(vi) is not a 'complete code' for the purpose of considering private life, since its exclusive focus is the life that the applicant might lead upon return to his country of origin; the Rule leaves no room for consideration of the private life that might exist within the UK. As such my Article 8 assessments are more "at large" in line with Razgar [2004] UKHL 27 and Huang [2007] UKHL 11.

37. I accept and find as fact that the adult Appellants have established a private life in the UK where they have worked, worshipped, made friends and studied. There would be an interference with those Article 8(1) rights if they were to be removed.

38. The decision to remove persons with no leave to remain is rationally connected to the legitimate Article 8(2) aim of protecting the economy and I accept that it is a decision that was lawfully open to the Respondent at the date she took it.

39. In assessing proportionality I have had regard to s117B of the Nationality, Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014). The maintenance of effective immigration controls is in the public

interest and although the adult Appellants have made numerous attempts to regularize their position, the reality is that they have, for the most part, been without valid leave in the UK. It is accepted that Dr Y has completed a PhD since his arrival in the UK and I can assume from this that he speaks good English. Mrs Ab is also educated to a high level, and records in her statement that she and her husband have always spoken English at home, which in turn has meant that the children have grown up with English as their first language. There is no evidence that the family have ever claimed benefits and I accept that if the adult Appellants were given the opportunity to work lawfully they would do so. They came to this country as privately-funded students and have to that extent been financially independent; that said I do bear in mind that the minor Appellant's have been accessing state funded education to which they have not been, for some years, entitled. The private lives of each individual Appellant have all been established whilst their status in the UK has been either precarious or unlawful and as such I attach little weight to it in the context of Article 8 outside of the Rules.

40. I have taken all of that into account, as I am required to do by statute: Dube (ss.117A-117D) [2015] UKUT 90 (IAC). Mr MacKenzie concentrates his submissions on the final sub-paragraph of s117B:

> "(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."

41. It is not in dispute that Miss A is a qualifying child, or that her parents have a genuine and subsisting parental relationship with her. Since I have found that it would not be reasonable to expect her to leave the United Kingdom it follows that the public interest does not require the removal of her parents.

42. Mr Jarvis agreed that if the appeals of the First, Second and Fourth Respondent were allowed, it would follow that the appeal of Master A would also be allowed on Article 8 grounds.

43. Having considered all of those matters I am satisfied that the Respondent has now shown the removal of this family is in the public interest or a proportionate response to the need to maintain immigration control. This is a family who have not sought to deliberately evade the authorities, nor to make vexatious applications. They have maintained contact with the Home Office and have, during the periods where their leave lapsed, made repeated attempts to regularise their positions. During that time Dr Y achieved what he came to the UK to do. Having come as a post-graduate

student he now holds a PhD in his chosen field (agriculture) and hopes to embark on a career that will have both academic and practical application. During the time it took him to complete his studies, his young family grew up. Miss A and Master A have both established rounded private lives in the UK and are now embarking on academic careers of their own. They would very much like to stay living at their home, attending their school and playing with the same friends. It is not an ideal situation. The rest of the family do not qualify for leave to remain and were they the only appellants the public interest may have demanded that they return to Nigeria. Miss A has however integrated into British culture to an extent that Ministerial statements, published policy and, I find, the Rules recognise that it will very likely be contrary to her best interests to expect her to leave now. She is fast approaching the age at which she will qualify for British nationality and will no doubt be an asset to her community, just as her parents hope. In those circumstances I find that the balance is tipped and that her parents and siblings should be permitted to stay with her.

Decisions

44. The determination of the First-tier Tribunal contains errors of law and it is set aside to the extent identified above.

45. I re-make the decision in the appeals as follows:

> "The appeal of Miss A is allowed under the Immigration Rules.
>
> All of the appeals are allowed with reference to Article 8 ECHR."

46. Because two of the parties are minors I make a direction for anonymity having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders.

"Unless and until a tribunal or court directs otherwise, the Respondents to this appeal are granted anonymity. No report of these proceedings shall directly or indirectly identify any member of this family. This direction applies both to the Appellant and to the Respondents. Failure to comply with this direction could lead to contempt of court proceedings".

Upper Tribunal Judge Bruce
18th September 2015