



IAC-AH-LEM-V1

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

Appeal Numbers: IA/42063/2014
IA/42064/2014

THE IMMIGRATION ACTS

**Heard at Centre City Tower Decision & Reasons Promulgated
Birmingham On 7th December 2015 On 21st December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**BOA
SAA**

(ANONYMITY ORDER MADE)

Respondents

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer
For the Respondents: Mr N Ahmed of Counsel instructed by Peer & Co

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a decision of Judge Tindal of the First-tier Tribunal (the FTT) promulgated on 15th January 2015.
2. The Respondents before the Upper Tribunal were the Appellants before the FTT. I will refer to them as the Claimants.

3. The Claimants are Nigerian citizens and are father and son. The second Claimant was born in February 2004 making him 11 years of age.
4. The Claimants applied for leave to remain in the UK based upon their family and private lives.
5. The applications were refused on 8th October 2014, the Secretary of State having considered Appendix FM and paragraph 276ADE(1) of the Immigration Rules. The Secretary of State also considered the best interests of the second Claimant as a child, pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009, and concluded that the Claimants could not satisfy the requirements of the Immigration Rules, and it would not be appropriate to grant leave to remain pursuant to Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention) outside the Immigration Rules.
6. The appeals were heard together on 8th January 2015. The FTT heard evidence from both Claimants, and the partner of the first Claimant, who the second Claimant regarded as his mother, although she was not his biological mother. The FTT found that both appeals turned on whether it was reasonable to expect the second Claimant to leave the UK. This was accepted to be correct by the Presenting Officer representing the Secretary of State before the FTT.
7. The FTT found that the second Claimant had lived in the UK in excess of seven years before the application for leave to remain was made, and found that it would not be reasonable to expect him to leave the UK, and therefore his appeal was allowed pursuant to paragraph 276ADE(1)(iv), and with reference to Article 8 outside the Immigration Rules. The first Claimant's appeal was dismissed under the Immigration Rules but allowed under Article 8 outside the Rules.
8. The Secretary of State applied for permission to appeal to the Upper Tribunal. In summary it was contended that the FTT had erred in assessing reasonableness, by conflating this threshold with that of the best interests of the child, devoid of an assessment of the public interest. It was submitted that the FTT had failed in assessing the second Claimant's best interests, to have regard to the public interest in maintaining effective immigration control.
9. It was submitted that the assessment of reasonableness under paragraph 276ADE(1) was fundamentally flawed because the FTT had not engaged with the need to consider the public interest, and this had infected the decision to allow the appeal on Article 8 grounds.
10. Permission to appeal was granted by Judge White of the FTT for the following reasons;
 - "a. The central issue was whether it would be reasonable to require the second Appellant to leave the UK (paragraph 15). Finding that it was unreasonable (paragraph 20), the judge allowed the appeal of the first

Appellant on the basis of Article 8 outside the Rules and the appeal of the second Appellant under paragraph 276ADE and Article 8.

- b. It is arguable that in allowing the appeals the judge gave insufficient consideration to the precarious nature of the Appellants' immigration status and the public interest in immigration control and the economic welfare of the state."

11. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FTT had materially erred in law such that the decision must be set aside.
12. Following the grant of permission to appeal, the Claimants lodged a response dated 15th March 2015, pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008, contending in summary, that the FTT decision disclosed no error of law and the grounds submitted by the Secretary of State were an attempt to re-argue the appeals.

Oral Submissions

13. Mr Mills submitted that if the FTT had considered only the issue of reasonableness and the best interests of the child, that would have been an error of law, but he accepted that that was not the case in these appeals.
14. Mr Mills observed that at paragraph 19 the FTT had considered the public interest in immigration control and therefore the grounds submitted on behalf of the Secretary of State did not disclose an error of law, and Mr Mills accepted that the application of the Secretary of State should be dismissed, and the decision of the FTT upheld.
15. Mr Ahmed agreed.

My Conclusions and Reasons

16. In my view Mr Mills was correct to concede that the grounds submitted on behalf of the Secretary of State do not disclose any error of law in the FTT decision.
17. The complaint that the FTT did not consider the public interest is without merit. The first Claimant had a very poor immigration history and this was recognised and considered by the FTT. In paragraph 19 there is a reference to the poor immigration history of unlawful entry, applications made in false names, and long-term overstaying. In the same paragraph the FTT recognised that the best interests of the second Claimant are not paramount, and those best interests can be "over-ridden" by the interests of immigration control. The FTT recorded that this was the only countervailing factor relied upon by the Secretary of State at the FTT hearing. The FTT also recognised that the second Claimant was in the UK unlawfully, and commented that this was relevant, but unlike his father, it was not his fault and so weighed less heavily in the balance.

18. The FTT recorded at paragraph 15, the submission made on behalf of the Secretary of State, that both appeals turned on whether it was reasonable to expect the second Claimant to leave the UK, and in paragraph 20 the FTT recorded that this was the agreed issue in the appeals.
19. As now accepted on behalf of the Secretary of State, the FTT did not omit to consider the public interest in maintaining effective immigration control, and made findings and conclusions that were open to it, on the evidence, and gave adequate and sustainable reasons for those findings and conclusions.
20. The FTT did not err in concluding that it would not be reasonable to expect the second Claimant to leave the UK, and therefore allowed his appeal pursuant to paragraph 276ADE(1)(iv) and with reference to Article 8 outside the Rules.
21. The FTT did not err in concluding that once that decision had been made, the first Claimant's appeal could be allowed, having considered the factors set out in section 117B of the Nationality, Immigration and Asylum Act 2002.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision must be set aside. I do not set aside the decision. The appeal of the Secretary of State is dismissed.

Anonymity

The First-tier Tribunal did not make an anonymity direction. I make an anonymity order of my own volition pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 because the second Claimant is a child. No report of these proceedings shall directly or indirectly identify the Claimants or any member of their family. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 9th December 2015

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The decision of the First-tier Tribunal stands and therefore so does the decision not to make a fee award.

Signed

Date 9th December 2015

Deputy Upper Tribunal Judge M A Hall