



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

Appeal Numbers: IA/44679/2014  
IA/44687/2014  
IA/44696/2014  
IA/44698/2014  
IA/44705/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 November 2015**

**Decision and Reasons  
Promulgated  
On 2 December 2015**

**Before**

**LORD TURNBULL  
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)  
DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**Mr BABATUNDE SOSANWO  
Mrs JANE SOSANWO  
OeS  
OnS  
OaS  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S. Praisoody of Counsel instructed by Visa Direct  
For the Respondent: Mr P. Nash, Specialist Appeals Team

## **DECISION AND REASONS**

### Introduction and Background

1. The first two appellants are a Nigerian couple, now aged 43 and 40 respectively. The remaining appellants are their two daughters, now aged 10 and 4 years, and their son now aged 9 years. By decision dated 24 October 2014 the Secretary of State refused to grant the appellants leave to remain in the United Kingdom and issued directions for their removal under section 47 of the Immigration, Asylum and Nationality Act 1999. The appellants sought to challenge the Secretary of State's decision on human rights grounds at a hearing before the First-tier Tribunal on 23 April 2015. By decision promulgated on 15 May 2015 First-tier Tribunal Judge Tipping dismissed the appeals. By permission dated 22 July 2015 the appellants were given leave to appeal his decision to the Upper Tribunal.
2. The first two appellants have lived in the United Kingdom since their return to this country in 2004, they having arrived and been removed the previous year. On each occasion they entered the United Kingdom they did so using passports which were not their own. All of their children have been born in the United Kingdom. On 12 July 2013 the appellants applied for further leave to remain which was refused for the reasons given in the respondent's decision letter of 24 October 2014.

### The First-tier Tribunal Hearing

3. At the hearing before the First-tier Tribunal it was argued on the appellants' behalf that to return them to Nigeria would be a disproportionate breach of their rights to private and family life as protected by Article 8 of the European Convention on Human Rights. The argument was focused on the circumstances of the three children, none of whom had any exposure to life or culture in Nigeria. The two elder children were in education in the United Kingdom and it was argued that it would be unreasonable to remove them from that environment. A further argument was advanced in relation to health problems which two of the children were said to suffer from.
4. The First-tier Tribunal Judge heard oral evidence from the first appellant only but took into account other documentary material lodged on the appellants' behalf, which included a witness statement prepared by the first appellant.

5. Having considered the available evidence the Judge rejected the contention that neither of the first two appellants had any family remaining in Nigeria. He rejected the explanation that the appellants had been supported throughout their time in the United Kingdom by an unnamed church, as the first appellant had claimed, and he rejected the evidence given by the first appellant as to medical difficulties suffered by two of his children.
6. In addressing the question of interference with family life, the Judge noted there was no reliance placed on any such life beyond that which existed between the family group. Upon the view that they would return to Nigeria together he concluded that their family life would not be interfered with and dismissed the appeals under Article 8 based on the right to respect for family life.
7. In addressing the question of interference with private life, the Judge observed that there was an almost total lack of evidence as to any private life established in the United Kingdom by the first and second appellants. He noted there was no suggestion that their personal circumstances engaged the Article 8 provisions of the Immigration Rules and the Judge concluded that there was nothing in their circumstances which might be characterised as exceptional.
8. The Judge also noted more generally that there were significant gaps in the evidence given in support of the appeals. In addition to the absence of evidence concerning private life for the first two appellants, he commented that there was no supporting medical evidence led for the first appellant's claim that two of his children suffered from medical conditions. He also recorded in paragraph 8 of his decision that: "The second appellant did not attend the hearing to give oral evidence and no explanation of her absence was provided".
9. In considering the interference with private life which would be engaged on the removal of the children, the Judge took account of the need for him to have regard to the welfare of the children as set out in section 55 of the Borders, Citizenship and Immigration 2009 and the relevant provisions of the Immigration Rules. He concluded that some knowledge of African language and culture would have been communicated to these children of Nigerian parents, that the language commonly spoken in Nigeria was English and that the children would adapt readily to new circumstances. He concluded that none of the children had been shown to be suffering from a significant medical condition affecting their removal and that there was nothing in their circumstances which would render it unreasonable for the children to travel to and live in Nigeria. For all of these reasons the First-tier Tribunal Judge refused the appeals on behalf of the children on Article 8 grounds under the Immigration Rules, concluded that there was nothing of an exceptional nature which outweighed the

public interest to be served by the enforcement of a firm and fair system of immigration control and decided that it would be proportionate to remove all of the appellants to Nigeria.

### The Appeal to the Upper Tribunal

10. The grounds upon which permission to appeal was granted do not identify any succinct basis upon which it is said that an error of law was made by the First-tier Tribunal Judge. However, the essential points being made seem to be these:
  - i. The appellants then legal representatives did not prepare for or conduct the hearing adequately;
  - ii. The Judge failed to give adequate weight to the circumstances of the children's education in the United Kingdom and the disruption to that which would flow from expulsion to Nigeria;
  - iii. An apparent misunderstanding was made by the Judge as to the presence of the second appellant at the hearing.
11. On behalf of the appellants it was argued that there was evidence as to family life which could have been provided had the appellant's then legal representative taken witness statements in advance of the hearing or taken that evidence orally from either the first appellant or the second, whom it was asserted was present within the hearing room during the appeal, contrary to what was said by the Judge. It was also argued that medical evidence was available but had not been introduced by the previous representatives.
12. It was argued that the evidence placed before the First-tier Tribunal Judge concerning the education of the two oldest children was not given sufficient weight. We were informed that since the hearing the eldest child had been offered the opportunity to apply for admission to a grammar school in Kent. It was argued that this was an opportunity which would not be available in Nigeria and that the Judge had failed to give adequate weight to the importance of the children remaining in the educational environment with which they were familiar and to the fact that they had no connection with or experience of life in Nigeria.
13. On behalf of the respondent it was observed that no authority had been relied upon by the appellants in support of their argument on inadequate representation. It was queried what additional information would in any event have been available in a statement from the second appellant. It was submitted that all relevant material had been before the First-tier Tribunal Judge who had been well aware of the

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obligation under section 55 of the 2009 Act to treat the needs and welfare of the children as a primary consideration. He had taken full account of the educational and other circumstances pertaining to the children and had arrived at a proper decision which had been well reasoned.

## Discussion

14. We did not find it easy to understand what legal consequence was said to flow from the complaint advanced about the quality of the appellant's previous legal representatives. It was not, for example, said to reflect an error of law on the part of the Judge. Broadly, the argument seemed to be that the appellants had suffered unfairness as their appeals had not been presented as well as they might have been. However, there was no attempt to explain the detail of what other evidence was available, far less why it had not been presented. There was, for example, even now no witness statement from the second appellant setting out the evidence which she would have given and providing an explanation as to why she was not called as a witness, if it is true that she was at the previous hearing. In the bundle produced for the Upper Tribunal Hearing there were some documents apparently demonstrating appointments made for the eldest child in April and May 2015 at a children's physiotherapy orthotic clinic and an appointment in May 2015 for her at the paedodontic outpatient Department of the Kings Dental Institute. There was still no information as to the nature of any treatment received, her condition or prognosis. There is therefore no basis upon which we could be satisfied that the appellants possess important information relevant to their appeals which was not presented to the First-tier Tribunal Judge because of inadequate preparation or poor presentation on the part of their legal representatives. We could not therefore conclude that they had been denied a right to a fair hearing on account of inadequate representation. We would also observe that we do not know what the previous representatives' response to the suggestions made is.
15. In our view, the First-tier Tribunal Judge was correct to conclude, as he did in paragraph 13 of his decision, that the children will have acquired a knowledge of Nigerian language and culture from their parents, that they were all in any event of an age readily to adopt the culture and practices of Nigeria with the assistance of the parents and that English is widely spoken in that country.
16. The Judge also took the view that the two elder children would go to Nigeria with the benefit of their respective periods of education in the United Kingdom and that this coupled with the knowledge of English language would stand them in good stead in that country. He considered that it would be reasonable to expect children of their ages to adapt to new surroundings and he took full account of the evidence relating to their education which was placed before him. He gave due weight to the stage of education which each child had reached but concluded, appropriately in our view, that it would not be unreasonable for the children to travel to and live in Nigeria. He also

concluded, correctly, that none of the appellants suffered from a medical condition which would create an obstacle to the family establishing life together in Nigeria.

17. In our view there is no merit in the criticisms of the First-tier Tribunal Judge's approach to the issue of interference with the right to private life possessed by the appellant children.
18. The last issue raised concerns the First-tier Tribunal Judge's apparent misunderstanding as to the presence of the second appellant at the hearing. No evidence was offered in support of the assertion that the second appellant was in fact present at the hearing contrary to the Judges understanding. However, proceeding on the assumption that the assertion is correct, we do not consider that this can be said to have infected the decision making process to any material extent. As we have already observed, it is not apparent that the second appellant has anything additional to contribute. The only real issue before the First-tier Tribunal was focused upon the impact of removing the children from their educational circumstances in the United Kingdom. The Judge dealt adequately with the evidence concerning this issue and the submissions made to him thereon. As we have explained above, we consider that his conclusions were appropriate. The question for the Judge was whether or not it would be reasonable to expect the three children all then under 10 to return to Nigeria. His assessment of this question was not influenced by the presence or otherwise of their mother at the hearing before the First-tier Tribunal.

#### Decision

19. For the reasons which we have given the decision of the First-tier Tribunal promulgated on 15 May 2015 contains no error of law and will stand. This appeal to the Upper Tribunal is dismissed. No anonymity direction is made.

Signed: Alan D. Turnbull  
Judge of the Upper Tribunal

Date: 26/11/2015