IAC-HW-MP-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/05399/2015
AA/05407/2015
AA/05414/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
on 21st April 2016	**on 25th April 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

[A A] + 2 children

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellants: Mrs F Farrell, of Peter G Farrell, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are a mother and two children, all citizens of Nigeria. No anonymity order has been sought.

© CROWN COPYRIGHT 2016

2. The appeals to the First-tier Tribunal were argued primarily on asylum grounds.

3. First-tier Tribunal Judge Handley dismissed the appeals by a decision promulgated on 2nd December 2015, on asylum and on all other available grounds.

4. The appellants sought permission to appeal to the Upper Tribunal on the following grounds:

> "At paragraphs 30 and 31 the judge makes his assessment of the best interests of the children and states *'I accept that such a return will result in disruption to their family life and that it is generally in the interests of children to have both stability and continuity of social and educational provision'*. He concludes however that since [E] [the older child] has changed school five times *'he is used to change'*. He deals with his relationship with his father and accepts that he has a good relationship with him. *'However he can maintain contact with his father as he does at present'*.
>
> It is arguable that the fact [E] was previously in care, then returned to the first appellant under supervision requirement, could have led to a different Article 8 assessment. It is arguable that removing him from his present school and regular contact with his father would not be in his best interests …"

5. A First-tier Tribunal Judge refused permission, saying that the conclusions reached were open to the judge and were adequately reasoned.

6. The application for permission was renewed to the Upper Tribunal, adding the observation that "a number of agencies including social workers" had felt that it was in [E]'s best interests to have regular contact with his father, but otherwise relying on the same grounds.

7. On 4th February 2016 the Upper Tribunal granted permission, on the view that the grounds relating to the best interests of the children were arguable.

8. In submissions further to the grounds, Mrs Farrell said that the error of law identified centred entirely on the older child and his relations with his father. He is a child now aged 10 who has lived in the UK for six years. He was first brought here by his mother (the first appellant) and left with her brother and his partner, which resulted in mistreatment such that he was taken into foster care. During that time he had supervised contact with his father, who is also a citizen of Nigeria, living in the UK with his UK citizen wife. Mrs Farrell pointed out that although the judge said that the child could still have contact with his father, the situation is that he presently sees his father (who lives in London, while the appellants live in Glasgow) about once a month and during school holidays. They are also in daily contact by telephone. It was not in the child's best interests to be removed from the UK and to lose that degree of contact. The question of how much contact there would be following removal to Nigeria had not been explored, but it seemed realistic to suppose that such contact would

be much less frequent and perhaps no more than annual. The judge has simply come to the wrong conclusion on proportionality, in light of the foregoing, and the decision should be reversed. Mrs Farrell accepted my observation that although not so stated in the grounds this amounted to an argument that the judge reached an irrational conclusion.

9. Mr Matthews submitted that the grounds identified no error of law, and amounted to no more than disagreement with the fact based proportionality assessment which was open to the judge and was properly explained. The decision, read as a whole, showed that the judge had the factual background clearly in mind and was well aware that removal to Nigeria must result in a lesser degree of direct contact between father and son. It had not been shown that the interests of the child would be adversely affected to any significant extent, or so as to render it disproportionate to expect the three appellants to return to Nigeria in accordance with the requirements of the Immigration Rules. In order to succeed the appellants would have had to establish that the outcome was irrational or perverse, of which they fell well short.

10. Mrs Farrell in response said that there had been no paucity of evidence on the matter of the best interests of the children, even if it had not been the main focus of the hearing in the First-tier Tribunal, and that the evidence ought to have led the judge to a positive conclusion on those grounds.

11. I reserved my determination.

12. The grounds reassert the case made to the First-tier Tribunal on the basis of best interests of the children, and do no more.

13. Although Mrs Farrell again pressed that case on its merits as far as it properly could be made, the grounds do not disclose that it was an error of law to come down on the other side.

14. The judge set out all the relevant circumstances and arrived at a proportionality assessment which was open to him. In order to succeed, the appellants would have had to show absence of reasoning or at least a significant deficiency.

15. If that had been an achievable target, I might have permitted the grounds to be expanded to accommodate such a challenge; but the decision is simply not open to such an attack.

16. The one passage which might be criticised, as identified in the course of submissions, is in the middle of paragraph 31:

> "The child appellants … are not British citizens and have not spent all their lives here. I accept that [E] has a good relationship with his father. However [E] can maintain contact with his father as he does at present. It is likely that his father will be unable to visit him as frequently as he does at present. However many families are in the situation where one parent lives or works in a different country from his

> or her children. I do not accept that the interference in the family life of the children is disproportionate …"

17. Taken on its own, the proposition that [E] could maintain contact with his father "as he does at present" does not fit well with the evidence. However the paragraph and the decision have to be read as a whole. There is no reason to think that some direct contact might not continue, and the comment is immediately followed by the observation that visits will not be as frequent. There is nothing in this which can be magnified into a material error of law.

18. The decision of the First-tier Tribunal shall stand.

22 April 2016
Upper Tribunal Judge Macleman