



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

Appeal Numbers: DA000662014  
DA000672014  
DA000702014  
DA000692014  
DA000682014

IA209062014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**Consent to withdrawal given orally  
immediately following the hearing  
On 4 February 2016**

On 24 May 2016

**Before**

**UPPER TRIBUNAL JUDGE CRAIG**

**Between**

**H J AND OTHERS  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr M Goldborough, Solicitor instructed by UK Law Solicitors

For the Respondent: Mr K Norton, Home Office Presenting Officer

**CONSENT TO WITHDRAWAL OF DECISION UNDER RULE 17(2) OF  
TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellants brought an appeal against a decision of the respondent to deport them to Nigeria. The first appellant has a number of criminal convictions and the respondent considered that she should be subject to conducive deportation pursuant to paragraph 398(c) of the Immigration Rules on the basis that her offending had caused serious harm. It is not necessary for the purposes of this decision to express a view as to that. The other four appellants are her children, all of whom were born in the UK and have lived here since. The oldest child is now 10 years old and by the time the appeal was heard in the First-tier Tribunal he had made an application for British citizenship which was noted in the First-tier Tribunal's decision at paragraph 44. Unless there were circumstances of which the Tribunal was not at that time made aware it must have seemed fairly likely that that application would be granted because absent special reasons the oldest child, having been born in this country and having lived here for over ten years was at that time entitled to British citizenship. Although the Tribunal found (in my judgment without giving sufficient reasons for so finding) that if the older child's appeal succeeded, so should the appeals of the other appellants, his appeal in fact failed because even though it was recognised that the medical treatment which he required would probably not be as good in Nigeria as it would be in this country, as he was not a British citizen he was not entitled to better treatment than was available in his own country and so it would be reasonable for him to be removed along with his mother and the rest of his family.
2. I had reached a decision which if necessary I would have given but which for the reasons which follow it is not necessary now for me to elaborate on, that the decision made by the First-tier Tribunal rejecting the appellants' appeals contained errors of law which were material such that the decision would have had to be set aside and re-made. However, matters have moved on since that hearing in that the oldest child has now in fact been granted British citizenship and so in respect of him at any rate clearly he cannot be deported because he is a British citizen.
3. The circumstances of the remainder of the appellants have changed to the extent that whatever the situation might have been at the time of the original decision when none of the family had any right to remain, it is now the case that the oldest child cannot be deported and so consideration of his best interests and whether or not the consequences on him of his mother's removal would be unreasonable and/or unduly harsh (depending on whether or not the actions of the first appellant could properly be said to have caused serious harm so that she can be properly deported under the Rules rather than removed) will have to be considered in the context of the position of the older child. Consideration if the first appellant could otherwise be deported would have to be given to whether it would be unduly harsh to expect a British citizen child to go to a country where he will be unable to avail himself of the medical treatment which he requires which, as the First-tier Tribunal found, was probably better in this country.

4. In these circumstances on behalf of the respondent, Mr Norton very properly advised the Tribunal that the respondent wished to withdraw the underlying decision deporting these appellants and reconsider in the case of each appellant (although clearly the older child cannot be deported) whether or not she wishes still to make a deportation decision. In my judgment this is effectively a withdrawal of the respondent's case as covered by Rule 17(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 but this withdrawal requires the consent of the Upper Tribunal pursuant to Rule 17(2).
5. I note that on behalf of the appellants Mr Goldborough agreed that this is a sensible course for the respondent to take and does not seek to object to the withdrawal. In the view of this Tribunal this is indeed a sensible course for the respondent to take because the circumstances have changed so significantly that these changes need to be properly considered by the respondent. Accordingly, this Tribunal consents to the withdrawal of the underlying decision pursuant to Rule 17(2).
6. I would however add just one observation and it is this. The original decision carried with it a right of appeal which these appellants have exercised and although Mr Norton was not able to give an undertaking to this effect, I would expect the respondent, if she chooses to make a fresh deportation and/or removal decision in respect of any of the appellants not to certify such a decision because in the view of this Tribunal, on the facts as they are currently being put before the Tribunal, an appeal against a decision to deport or remove any of these appellants could not properly be seen to be clearly unfounded such that an appeal could not possibly succeed in front of an Immigration Judge. I trust the views of this Tribunal on this point will be respected because were this Tribunal not confident that the appellants would still have an in country right of appeal against any deportation decision which might subsequently be made, consent to the withdrawal would not be granted.

Signed:

A handwritten signature in black ink that reads "Ken Craig". The signature is written in a cursive style and is positioned above a light blue rectangular stamp.

Upper Tribunal Judge Craig  
2016

Date: 15 April

and amended 23-5-16