



IAC-PE-SW-V1

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

Appeal Numbers: IA/04607/2015
IA/04608/2015, IA/04609/2015
IA/04610/2015, IA/04611/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11th January 2016**

**Decision & Reasons Promulgated
On 9th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**E G U (FIRST APPELLANT)
H U (SECOND APPELLANT)
R B D U (THIRD APPELLANT)
O O E U (FOURTH APPELLANT)
O D O O U (FIFTH APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants Mr Turner of Counsel instructed on Direct Access

For the Respondent: Miss Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are all citizens of Nigeria. This involves the parents and 3 children of a single family unit. As these proceedings concern the status

and interests of children, in order to protect those children I make an anonymity direction.

2. This is an appeal by the Appellants against a decision of First-tier Tribunal Judge Fox promulgated on 16th June 2015. By that decision the judge dismissed the Appellants' appeals against decisions of the Respondent to remove each of them from the United Kingdom to Nigeria.
3. The decision are dated on or about 12th January 2015. The decisions were to refuse each of the Appellants further leave to remain in the United Kingdom under Article 8 of the ECHR, the Immigration Rules or otherwise and thereupon to remove them from the United Kingdom. The judge dismissed the appeals of all the Appellants against the decisions.
4. By a decision made on 8th October 2015 leave to appeal to the Upper Tribunal was granted. Thus the matter appears before me to determine in the first instance whether or not there is an error of law in the original decision.
5. The parents, the two first Appellants, had entered the UK illegally in 2004 and had remained in the UK since that date. All the three children were born in the UK, July 2006, February 2007 and October 2010. Thus of the three children only one at the time of the hearing had been in the UK in excess 7 years.
6. On the 7th October 2008 an application had been made for an EEA residence card. That application was refused on the 4th January 2010. A further application for an EEA residence card was made on the 12th July 2011 and that was refused 15th December 2011. On the 15th August 2013 the Appellants had applied for leave to remain on the 15th August 2013 on the basis of family and private life. That application was refused as of 24th August 2013. The Appellants further applied for leave to remain on the basis of family and private life on the 13th September 2013. that was refused as of the 1st October 2013.
7. The Appellants made the present application on the 25th October 2013. The decisions as stated were made on the 12th January 2015.
8. The Grounds of Appeal raise a number of matters. First and foremost within the Grounds of Appeal it is alleged that the judge at the commencement of the hearing indicated that as there was no attendance by a representative for the Respondent this meant that in an adversarial system there was no-one to cast doubt the evidence or challenge the credibility of the Appellants' evidence.
9. As is pointed out in the Grounds of Leave such an assertion that a judge has made a declaration that there was no challenge to the credibility of the Appellants was not sustainable in the absence of a contemporaneous

note of the proceedings from the representative, who appeared on behalf of the Appellants. Before me Counsel on behalf of the Appellants, Mr Turner, offered himself as a witness.

10. My attention has been drawn to the case of BW (witness statements by advocates) Afghanistan [2014] UKUT 00568. Consistent with the leave granted that case suggests that the person representing the Appellants at first instance should make a witness statement. Guidance is given in paragraph 5 of the case to indicate the steps that should be taken including sub-paragraph 4 that the representative should not present the appeal before the Upper Tribunal.
11. Whatever can be said there was no contemporaneous note provided. There was no witness statement provided. In the circumstances one has to look at all of the factors in assessing the issues. The two adult Appellants had come to the United Kingdom and entered unlawfully. They had deliberately entered in breach of the law. They had remained here and had worked here unlawfully. They have never had any legal status to remain in the United Kingdom. They did apply in 2008 to seek to regularise their status claiming to be extended or family members of a European national but that application was refused. Further applications had been refused. The Appellants however continued to remain in the United Kingdom. Taking all the circumstances into account I am satisfied that the judge was entitled to look at the issue of credibility and reliability in the way that he did. The judge had approached that issue on a legally correct basis.
12. The Grounds of Appeal on behalf of the Appellants thereafter are lengthy and set out in detail parts of the evidence. In substance the challenges amount to the following:-
 - (a) That the judge has failed to approach the evidence of the expert correctly and has failed to refer to specific pieces of evidence.
 - (b) The judge has failed to assess Section 55 of the Borders, Citizenship and Immigration Act 2009 and the best interests of the children correctly.
 - (c) The judge has failed to assess the reasonableness of the return of the Appellants to Nigeria in accordance with the provisions of Section 117B of the 2002 Act as amended and in accordance with the requirements of 276ADE(vi).
13. With regard to the expert evidence it is to be noted that criticism appeared to be made that the judge had approached the expert evidence on the basis that the expert had been reliant upon the evidence from the two adult Appellants as to what circumstances would face them in Nigeria. It is suggested that the judge had approached the matter in a legally incorrect way. When challenged about the matter the Appellant's

representative rather than pointing to background information or other evidence from the appellants, as to what their family circumstances would be, sought to rely on the fact that there was evidence from teachers in the United Kingdom as to the circumstances in the United Kingdom and other evidence as to the circumstances in the United Kingdom. Once that was that other evidence that says nothing about what would face the Appellants on return to Nigeria

14. It is accepted at paragraph 19 of the submissions made that the expert was not commenting on the socioeconomic background in Nigeria but rather upon the circumstances that the two adult Appellants had told her about and what they considered they faced on return. The suggestion then that the judge in referring to the expert says that for the circumstances that the parties would face on return was reliant wholly upon what the two adult Appellant says appears to have been accepted. Mr Turner on behalf of the Appellant sought to argue that that failed to take account of the school reports and other reports relating to the circumstances of the children in the United Kingdom. With respect that is not the issue under consideration. The issue under consideration was what were the circumstances going to face this family if they were returned to Nigeria. The judge was merely commenting that the expert rather than having either a background knowledge as to the circumstances that would be faced or seeking to obtain information about such had relied wholly upon the evidence of the Appellants. With respect that appears to be exactly what the expert did and the judge was entitled in assessing what would face the Appellants on return to Nigeria to take into account that the circumstances were wholly reliant upon the evidence of the two adult Appellants, two individuals who had been willing to come to the United Kingdom in breach of the law and remain in the United Kingdom in breach of the law for a substantial period of time.
15. It has also to be noted that whilst there was some intimation that the Appellants would have no family members to rely upon in Nigeria the evidence to the expert was otherwise to the effect that they had a number family members there. The judge was entitled to conclude in that light that there would be family members who could provide support and assistance to the two Appellants.
16. I note that it has been accepted that both the adult Appellants were well-educated. It cannot be said that what they were doing was in ignorance. It is clear that they had entered into a deliberate course of conduct to enter the United Kingdom and remain in the United Kingdom despite the law.
17. Further issues in the case relate to the reasonableness of returning the Appellant and the family to Nigeria and the children specifically and the best interests of the children.

18. It is suggested that the judge has started by stating conclusions before assessing the circumstances. With respect the judge had to start somewhere. The approach of the judge is consistent with the approach advocated in EV (Philippines) and Others v The Secretary of State for the Home Department [2014] EWCA Civ 874. I refer specifically to the judgment of Lord Justice Lewison at paragraph 58. The judge sets out the following:-
 - “58. In my judgment therefore the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the children to follow the parent with no right to remain to the country of origin?”
19. The judge has carefully set out the appropriate legal cases. There are a large number of cases of relevance. The judge has then noted the submissions made on behalf of the Appellants. The judge has specifically noted that he should not punish the children for their parents' conduct. The judge noted that submissions were being made that there was no support network in Nigeria and that the parents could not be expected to take the children to a third world country. The judge also considers that submissions that the effect of removal of the children will have according to the expert.
20. However having considered that the judge was right to start from the point of view that in the normal course of events the parents having no right to be in the United Kingdom would be expected to return to Nigeria. The best interests of the children thereafter given their ages was to remain with the parents.
21. The Appellant's representative sought to argue that as one of the children had spent over seven years in the United Kingdom in accordance with the provisions or the Immigration Rules and Section 117 it would not be reasonable to remove that child. There are a total of five individuals to be considered only one of whom has spent more than seven years in the United Kingdom.
22. In the circumstances the judge was entitled to look at the family as a family unit in assessing the best interests of the children. The best interests of the children were to remain with their parents. That was a conclusion that the judge was entitled to make. The judge's approach thereafter is consistent with the paragraph set out from Lord Justice Lewison.
23. The judge has given valid reasons for concluding not only that it was reasonable to expect the parents to return to Nigeria but that he was

satisfied it was also reasonable for the children to return to Nigeria. The judge was entitled to come to that conclusion on the basis of the careful analysis of the facts. In the circumstances there is no error either in the assessment by the judge of the circumstances relating to the best interests of the children or whether or not it was reasonable for the children to return to Nigeria with their parents.

24. In the circumstances there is no material error of law and I uphold the decision to dismiss these appeals on all grounds.

Notice of Decision

The appeals are dismissed.

Signed _____ Date _____

Deputy Upper Tribunal Judge McClure

I have dismissed the appeal and therefore there can be no fee award.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed _____ Date _____

Deputy Upper Tribunal Judge McClure