



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

Appeal Numbers: IA/09957/2014
IA/09958/2014
IA/09959/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7 December 2015**

**Decision & Reasons
Promulgated
On 4 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**ID
LD
JD**

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss D Revill, Counsel, instructed by Peer & Co (Watford)
For the Respondent: Miss Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

1. This is my extempore determination in respect of the error of law hearing that has taken place before me today. The appellants in this case are Mr ID (the father), Ms LD (the mother) and finally Miss JD (their child currently aged 14). The matter comes before me pursuant to a grant of permission

to appeal by Upper Tribunal Judge McWilliams dated 27 April 2015 when she had considered the matter on the papers.

2. The original decision now on appeal is that of First-tier Tribunal Judge Wilson dated 5 November 2014. He had dismissed the appellants' appeals against the Respondent's decisions to remove them all from the United Kingdom. There were three grounds of appeal. They are summarised in the skeleton argument relied upon by the Appellants, helpfully prepared by Miss Revill in respect of this case.
3. The grounds are summarised at paragraph 3 as follows: (i) that the judge erred in failing to have regard to **Azimi-Moayed and Others (Decisions affecting children; onward appeals) [2013] UKUT 00197 (IAC) and EV (Philippines) and Others v Secretary of State for the Home Department [2014] EWCA Civ 874** when assessing the reasonableness of the third's Appellant's relocation; (ii) that the judge erred in finding that the fact that the third Appellant would be accompanied by her parents made it reasonable for her to leave the UK; and/or (iii) that the judge erred in failing to have regard to a material matter, namely the public interest consideration in Section 117B of the Nationality, Immigration and Asylum Act 2002.
4. It is clear to me that the real focus of this case is in respect of the third Appellant, i.e. the child. I accept of course that Judge Wilson did not have to refer specifically to case law or even to statute. In fact he referred specifically to **Azimi-Moayed** and to **EV (Philippines)** along with other authorities.
5. The ground of appeal in reality comes to this: that the judge focused too readily on the ability of this family to stay united as a family for the third Appellant, a 14 year old girl, to be able to return to Nigeria where she has not been for a very long time. That time being in the region of some eleven years or so. Questions in relation to the reasonableness or whether it would be unduly harsh or even possible for the child to return required greater analysis and the Court of Appeal's decision in **EV (Philippines)** is relied upon by the Appellant.
6. In this case I can well understand the judge's concerns in respect of the parents' very poor immigration histories and indeed the limited ambit of *their* private and perhaps family life arguments but the case was put in a very different context because of the child.
7. In my judgement, looking at the determination as a whole, despite paragraphs 8 and 10 in particular, where the First-tier Tribunal Judge said that he was noting this was a difficult matter because the child had entered the stage of her life when she was beginning to become independent of her parents, and despite the judge saying at paragraph 10 that each case will inevitably be fact sensitive as there is a broad spectrum of cases under the Rules, in my judgement there was much

more to this case. That is because as the case law notes, the child had not just been in the United Kingdom from the ages of 0 to 7. She had been in the United Kingdom attending school, building up her private life during the critical ages that are highlighted in the Upper Tribunal's decision in **Azimi-Moayed**.

8. In my judgement, in the circumstances of this case, much more was required when conducting the best interests analysis when following the "Every Child Matters" policy of the Respondent and the Supreme Court's decision in **ZH (Tanzania)**. Right the judge was to highlight the poor immigration history of the parents, but in my judgement he did not provide the required statutory weight nor did he consider the very difficult position that the third Appellant was in because of the stance taken by her parents. In relation to the Section 117A-D NIAA 2002 issues there was a mandatory obligation upon the judge to consider Section 117 in respect of the parents and that was not explicitly or clearly undertaken. In my judgement it should have been a task that was undertaken.
9. In the circumstances I conclude that there is an error of law which is material in respect of the First-tier Tribunal Judge's decision. In the circumstances, without indicating one way or the other as to what the ultimate result might be, my decision is follows.
 1. The decision of First-tier Tribunal Judge Wilson contains a material error of law and therefore I set it aside in its entirety, both in respect of the Immigration Rules and Article 8.
 2. The matter shall be reconsidered at the First-tier Tribunal at a substantive hearing at Hatton Cross, not before Judge Wilson.
 3. The appellants shall file and serve any documents including witness statements 21 days before the hearing at the First-tier Tribunal. Those documents are to include a skeleton argument.
 4. The Respondent shall file and serve a skeleton argument in reply 7 days before the hearing.
10. **The decision of the First-tier Tribunal contained an error of law. It is set aside. The remaking of the decision shall take place at the First-tier Tribunal at Hatton Cross or such other hearing centre as may be directed. There is an anonymity direction in respect of this case as there is a child appellant.**

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 Mahmood