Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA229632014
IA229682014, IA229852014
IA229922014, IA230022014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26th April 2016	**On 25th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

KINSLEY KEM EBEN (FIRST APPELLANT)
ADA OLUFUNMILAYO SAHEED (SECOND APPELLANT)
[K K E] (THIRD APPELLANT)
[K O E] (FOURTH APPELLANT)
[K T E] (FIFTH APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Gilbert, Counsel
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The first Appellant is a national of Belize and Nigeria. The second Appellant is a citizen of Nigeria. The first and second Appellants are husband and wife and the parents of the third and fourth Appellants who are minor children born respectively on [ ] 2008 and [ ] 2011. The first Appellant entered the United Kingdom on 20th April 2002 on a visit visa. He was subsequently granted on various occasions leave as a student until

31st December 2007. His spouse, the second Appellant was granted entry clearance as a visitor valid from 4th October 2005 for six months.

2. In 2013 the Appellants made applications for leave to remain in the UK on the basis of their relationship with their family and on behalf of the first and second Appellants in particular with regard to the fact that the third Appellant was 7 years old at the time of application. The Secretary of State gave due consideration to their family life under Article 8 which he noted from 9th July 2012 fell under Appendix FM of the Immigration Rules. Their applications were refused on 8th July 2013.

3. Thereafter application was made for permission to apply for judicial review and the proceedings culminated in a decision of the Secretary of State on 12th May 2014 refusing the application for leave to remain on the grounds that removal would not place the United Kingdom in breach of its obligations under the Human Rights Act 1998. A direction under Section 10 of the Immigration and Asylum Act 1999 was given for removal of the Appellants from the United Kingdom.

4. The Appellants appealed and the appeal came before Judge of the First-tier Tribunal Finch sitting at Taylor House on 6th January 2015. In a determination promulgated on 14th February 2015 the Appellants' appeals were allowed.

5. On 23rd February 2015 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended firstly that the judge had failed to properly apply the Immigration Rules, in particular that the judge had failed to take into account the requirement of E-LTRPT.2.3-2.4, and so had failed to properly apply the Immigration Rules. Secondly the grounds contended that the judge had failed to properly apply statute insofar as the judge had found that in the context of the Immigration Rules Section 117B(6) of the 2002 Act meant that no weight had to be attached to the poor immigration history of the first and second Appellants. It was submitted that that approach constituted a material error of law.

6. On 15th April 2015 First-tier Tribunal Judge Lambert granted permission to appeal. Judge Lambert noted that the decision was less than logically set out and that the judge had failed to make clear at the end of the decision whether the appeals were allowed within or outside the Immigration Rules. There was no Rule 24 response.

7. It was on that basis that the appeal came before me to determine whether or not there was a material error of law in the decision of the First-tier Tribunal. I found that there was and that the judge had failed to give due and full consideration to the poor immigration history of the first and second Appellants. I gave directions indicating that the sole issue outstanding related to the balancing exercise to be carried out with regard to the appeals pursuant to Article 8 and the correct weight to be given as to when the family should or should not be required to leave the UK.

8. The matter returned before me on 27th November at which stage the first Appellant produced a letter from the Secretary of State dated 7th June 2010 indicating that it was under consideration that the Appellant was to be granted indefinite leave to remain in the United Kingdom. The Secretary of State sought time to consider that letter and acknowledged that if indefinite leave had been granted it would be the intention of the Secretary of State to withdraw the appeal. The matter then reappeared before me on 26th February 2016 and the Secretary of State asked for more time. I consented to such a request (with the support of the Appellant's representatives) but indicated that the matter could not be delayed further and the matter was to be relisted for the first available date 28 days hence.

9. It is on that basis that the appeal comes back before me. In this instant case the Secretary of State is represented by her Home Office Presenting Officer Mr Walker and the Appellants by their instructed Counsel Mr Gilbert.

Submissions/Discussion

10. Two matters are of importance here. Firstly I am advised by Mr Walker that the document of 2010 was produced by an administrative process by the case owner and I am referred to the computerised printout which shows that whilst the case owner may be recommending indefinite leave to remain that is subject to approval by the caseworker's line manager and that such approval was never granted. The letter was never printed with the intention that it would be sent to the Appellant but only to the senior caseworker. Consequently the position is that the Appellant is not in receipt of a grant of indefinite leave to remain.

11. Secondly as Mr Gilbert points out there has been a further major development in that the third Appellant [KKE], enrolled for British citizenship in April 2016. [KKE] was a child who had been born in the UK and had been present for ten years in the UK and as Mr Walker agrees and concedes firstly [KKE] meets all the requirements under the Immigration Rules and secondly he satisfied the requirements to make application for British nationality. Mr Walker accepts that this changes the whole complexion of the case and whilst he cannot make concessions he acknowledges that the whole face of the application has changed.

12. Mr Gilbert indicates that [KKE] is not yet a British citizen but that there is no doubt that the application will be confirmed and that he is entitled to it. He further points out that the fourth Appellant [KOE] has been here for almost eight years and that his family and private life within the UK is also a weighty factor. He asked me to allow the appeal.

Findings

13. As Mr Walker states the application by the third Appellant and the acceptance that he meets all the requirements to be granted British

citizenship materially changes the whole aspect of the appeal. There are similarities between this case and the guidance given in *PD and Others (Article 8 – conjoined family claims) Sri Lanka [2016] UKUT 00108 (IAC)* where the President of the Tribunal stated

> *"In considering the conjoined Article 8 ECHR claims of multiple family members decision makers should first apply the Immigration Rules to each individual applicant and, if appropriate, then consider Article 8 outside the Rules. This exercise will typically entail the consideration and determination of all claims jointly, so as to ensure that all material facts and considerations are taken into account in each case."*

14. Applying that principle and the fact that the third Appellant now succeeds under the Immigration Rules and that British citizenship with all requirements met is pending and the fact that the fourth Appellant has been in the UK as a minor now for over eight years I am satisfied that with the third Appellant succeeding under the Immigration Rules and the accepted fact that it would inappropriate to separate the family that despite the appalling immigration history of the first and second Appellants the Appellants claims must succeed.

15. It would not be practical to allow the appeals of the third and fourth Appellants and refuse those of the first and second. It is plainly in the best interests of the children to remain with their parents. I accept the submission of Mr Gilbert that it would not be reasonable to expect the third and fourth Appellants to leave the United Kingdom bearing in mind the continuity of social and education provision and the fact that they have never visited Nigeria. I further accept that the following factors point to the weighty integration of the family within the UK namely

- The first and second Appellants both speak English.
- The first Appellant established private life to which weight can be attached during the lawful period of his residence i.e. five and a half years.
- That the first Appellant has been present in the UK for fourteen years and only within that period has visited Nigeria on one occasion for three weeks in 2007.
- That the second Appellant has been present in the UK for eleven and a half years.
- That neither the first or the second Appellant had received benefits from the UK social fund and that their support has been in kind for church activities.

Decision

The appeal of the 3rd Appellant is allowed under the Immigration Rules.

The appeals of all Appellants are allowed under Article 8 of the European Convention of Human Rights.

No anonymity direction is made.

Signed Date 25 May 2016

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application made for a fee award and none is made.

Signed Date 25 May 2016

Deputy Upper Tribunal Judge D N Harris