Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/30978/2014**

IA/30983/2014

IA/30989/2014

IA/30996/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons**
On 11 March 2016	**Promulgated**
	On 30 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

K B I
(ANONYMITY DIRECTION MADE)

First Appellant

S F
(ANONYMITY DIRECTION MADE)

Second Appellant

I F O
(ANONYMITY DIRECTION MADE)

Third Appellant

I O O
(ANONYMITY DIRECTION MADE)

Fourth Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr B Lams (counsel) instructed by The Legal Resource Partnership
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellants. I do so, on the basis of the minority of the third and fourth appellants.

2. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Thomas promulgated on 31 October 2014, which dismissed the Appellants' appeals on all grounds.

Background

3. The Appellants are all members of the same family. The first appellant was born on 11 March 1982. The second Appellant was born on 22 October 1970, but died on 23 February 2015 (there is therefore no longer any appeal in relation to the second appellant). The third appellant was born on 24 September 2005. The fourth appellant was born on 6 May 2010. The second appellant was the first appellants husband. The third and fourth appellants are their children. The appellants are Nigerian citizens.

4. On 15 July 2014 the Secretary of State refused the Appellants' applications for leave to remain in the UK.

The Judge's Decision

5. The Appellants appealed to the First-tier Tribunal. First-tier Tribunal Judge Thomas ("the Judge") dismissed the appeals against the Respondent's decisions.

6. Grounds of appeal were lodged and on 7 May 2015 Upper Tribunal Judge Allen gave permission to appeal stating *inter alia*

> *"With some hesitation I grant permission. I consider that the application was made in time. My concern is with regard to the evidence before the Judge of the risk potentially faced by people suffering from Albinism in Nigeria, and at the same time argument can be heard as to whether Mr Ash's statement can be allowed in on Ladd v Marshall principles. Also relevant to this is the Article 8 issue,*

bearing in mind the fact that the child in question has been living in the UK for nine years. There is in addition now, the further point of the suicide of the second appellant. This, if an error of law is found, is a material matter to the issue of risk on return"

7. (a) Mr Lams, counsel of the appellants, move the grounds of appeal. He told me that although the respondent's decision related to an application for leave to remain in the UK on article 8 ECHR grounds, parties agreed that the appeal should proceed on consideration of the appellants claim to have a well-founded fear of persecution in Nigeria because of third appellant's Albinism. He told me that the Judge agreed to consider asylum, humanitarian protection and article 3 ECHR.

(b) Mr Lams took me to [19] of the decision and was critical of what he said was the superficial treatment that the Judge gave to both expert and background information. He reminded me that the appellants relied on two bundles before the First-tier. Those bundles contain more than 320 pages of evidence. He argued that inadequate consideration had been given to the contents of the documentary evidence.

8. I interrupted Mr Lam and started a discussion with both Mr Lam and Mr Tarlow (the Senior Home Office presenting officer). Parties' agents agreed that consideration of the 1951 convention was contained at [19] of the decision only. I drew parties agents attention to [17] of the decision, where the Judge relies on Edgehill & Ors v SSHD [2014] EWCA Civ 402, and finds that paragraph 276 ADE and appendix FM of the immigration rules are irrelevant. Mr Lams told me that that was a clear error of law and referred me to Singh v SSHD: Khalid v SSHD [2015] EWCA Civ 74. Mr Tarlow told me that he could not resist the submission.

9. I asked parties agents about the adequacy of fact finding in relation to the 1951 convention and whether or not what is contained at [19] is sufficient to enable the Judge to decide to dismiss these appeals on asylum grounds. Mr Tarlow indicated that he could not make any concessions but would adopt a neutral position and did not want to make any further submission.

Analysis

10. It is a matter of agreement that the arguments advanced for the appellants include a claim that the appellants have a well-founded fear of persecution because of membership of a particular social group. It is common ground that the First tier Judge was called on to determine a claim under the 1951 convention. In his decision the Judge dismisses the appellant's asylum claim.

11. Between [6] and [10] the Judge summarises the appellants' claims. Although the Judge records details of the third appellant's albinism and the fear that the appellants have of treatment that they may receive in Nigeria because of the third appellant's condition, the Judge makes no specific reference to the 1951 convention nor to a claim for asylum. In summarising counsel's submissions at [16], the Judge dwells on article 8 ECHR, and only in the penultimate sentence indicates that it is argued the third appellant *".... is also at risk of persecution as an albino and a member of a particular social group."*

12. It is only at [19] that the Judge deals with the claim that the third appellant has a well-founded fear of persecution. There, there is inadequate analysis of the background materials. What the judge records amounts to little more than bold statements that the third appellant may face discrimination and stigmatisation but not persecution, without any analysis of the evidence from which the Judge clause that conclusion. Despite the amount of evidence placed before the Judge, there is no meaningful analysis of that evidence nor is there an adequate fact-finding exercise conducted to enable the Judge to reach the conclusions set out at [19].

13. Although 19 is placed under a heading "findings", what is contained there amounts to conclusions. It is realistically that are no findings in fact relating to the appellants claim from asylum.

14. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

15. I find that the inadequacy of findings in relation to the claim for asylum amounts to a material error of law. I consider the error to be material because had the Tribunal conducted a properly reasoned fact finding exercise, based on an analysis of the evidence, the outcome could have been different.

16. At [17] the Judge incorrectly places reliance on Edgehill & others. Parties' agents are agreed that the Judge should have considered paragraph 276 ADE and appendix FM of the immigration rules, and only then moved on to consider whether or not the facts and circumstances

established by the evidence merit further consideration of article 8 ECHR (out-with the immigration rules).

17. I find that the Judge was wrong to omit consideration of the immigration rules. That error is a further material error of law.

18. I therefore find that the decision is tainted by material errors of law. I must set the decision aside.

Remittal to First-Tier Tribunal

19. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 a case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

> *(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or*
>
> *(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal*.

20. In this case I have determined that the case should be remitted because of the nature and extent of the fact finding exercise necessary to reach a just decision in these appeals. None of the findings of fact are to stand; a complete re-hearing is necessary.

21. I remit the matter to the First-tier Tribunal sitting at Birmingham to be heard before any First-tier Immigration Judge other than Judge Thomas.

CONCLUSION

Decision

22. The decision of the First-tier Tribunal is tainted by material errors of law.

23. I set aside the decision. The appeals are remitted to the First Tier Tribunal to be determined of new.

Signed Date 15 March 2016

Deputy Upper Tribunal Judge Doyle