



IAC-FH-AR-V2

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

Appeal Numbers: IA/35607/2014
IA/35610/2014
IA/35615/2014

THE IMMIGRATION ACTS

Heard at Birmingham

**On 22 February 2016
Prepared 22 February 2016**

**Decision & Reasons
Promulgated**

29 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**O A (FIRST APPELLANT)
A A (SECOND APPELLANT)
O A (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Blundell, Counsel
For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants, nationals of Nigeria, dates of birth 17 April 1959, 25 July 1979 and 31 May 1995 respectively, appealed against the Respondent's decisions dated 22 August 2014 to make removal directions, forms, IS151A having been served on 22 August 2014.
2. Their appeals came before First-tier Tribunal Judge P J Holmes (the judge) who, on 7 April 2015, dismissed their appeals both under the Immigration Rules and in respect of claims based on Article 3 and Article 8.
3. Permission to appeal those decisions was given by First-tier Tribunal Judge Osborne on 9 June 2015.
4. It is regrettable that so much time has passed before their applications came for hearing on 22 February 2016.
5. Mr Blundell on behalf of the Appellants submitted, with reference to grounds settled by other Counsel, that the judge had failed to generally and properly address the medical evidence as to the availability of psychiatric treatment in Nigeria and the issues raised with the judge concerning the stigma that would be attached to the Appellants not least arising from the second Appellant's mental health problems.
6. Further, in respect of the third Appellant it was said that the judge had failed in the analysis of the Article 8 claim to have considered the time and progress made by the third Appellant in the United Kingdom. The first Appellant, the mother of the second and third Appellants, was part of that family unit and as such remained the carer of the second Appellant and in practical terms was still the controlling influence in the life of the third Appellant.
7. Mr Mills having heard the submissions and indeed the references to the background evidence that had been provided to the judge but were not

addressed, accepted that anxious scrutiny could not have been properly given to relevant material; properly sourced and available concerning both the availability of mental health facilities in urban areas let alone rural ones in Nigeria. In addition evidence was provided by different sources on the marginalisation and stigmatisation of persons with mental health issues as well as its impact in terms of societal views on their relatives and family.

8. I was satisfied that the judge failed to properly address that background evidence, misunderstood or ignored the material evidence that was drawn to his attention concerning the availability of mental health treatment and facilities, let alone the availability of psychiatrists, and had not properly reasoned the claim in respect of the third Appellant or the impact of removal upon him now in the light of his age and length of time in the United Kingdom.
9. I was also satisfied that those errors impacted upon the outcome of the consideration of the first Appellant's case. Thus I was satisfied that the correct course was that the original Tribunal's decisions cannot stand. The appeals will have to be remade in the First-tier Tribunal.
10. I have considered Mr Mills' submission that there was an unchallenged adverse finding of fact raised concerning the first Appellant and her motives for or leading to the Appellants overstaying. I note that the first Appellant's credibility was affected by the judge findings that the first Appellant was not a reliable witness of fact. It seemed to me that the relevance of that might have some weight in the assessment of the public interest and in proportionality and it plainly will be a matter for the Respondent to raise in submissions, on remaking the decisions at that stage, on the relevance and weight to the first appellant's credibility to the outcomes of the appeals.

11. In the circumstances it did not seem to me that there was any practical purpose served in trying to retain that finding of fact so much as it, that is the first Appellant's reliability and truthfulness, would be a relevant consideration when assessing an Article 8 claim or an Article 3 claim in the context of Sections 117A-C of the 2002 Nationality and Immigration Act as amended.

Decision

12. The appeals are allowed to the extent the matters are returned to the First-tier Tribunal to await decisions in accordance with the law.

DIRECTIONS

- (1) Relist in the First-tier Tribunal not before First-tier Tribunal Judge Osborne or First-tier Tribunal Judge P J Holmes.
- (2) Relist two hours.
- (3) No interpreter required.
- (4) Bundles of any documents relied upon by the parties to be served on the other party and the IAC not later than ten working days before the appeals are heard for the purposes of remaking it.

ANONYMITY ORDER

13. An anonymity order was previously made on 31 March 2015 and that anonymity order is continued in respect of each of the Appellants.

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 14 March 2016

Deputy Upper Tribunal Judge Davey