IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/43637/2014
IA/43638/2014
IA/43639/2014
IA/43640/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 December 2015	**On 14 January 2016**
Extempore	

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

LANRE LOOKMAN AJIBOYE
TITO RUKA AJIBOYE
FTA
FA

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss V Akimtola, Counsel, instructed by J'Leon & Co
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal against the decision of First-tier Tribunal Judge Coffey which was promulgated on 12 May 2015 dismissing the appeals under the Immigration Rules and in respect of Article 8. The first appellant arrived in the United Kingdom, it appears in 2005, and was joined by his

wife. They have two children born on 2 December 2007 and 20 January 2012 who are the third and fourth appellants in this case.

2. The applications which led to the appeals to the First-tier Tribunal were made on 13 April 2012 and were for discretionary leave on the basis that to remove them to Nigeria would be in breach of Article 8 of the Human Rights Convention. Those applications were considered by the Secretary of State but were refused on 13 October 2013.

3. Subsequent to that there was an application for judicial review of those decisions which was settled by consent, the respondent agreeing to reconsider those matters stating that this would be done within three months of the date of the consent order being sealed absent of special circumstances and from the Secretary of State agreeing that if not granted leave they would be served with the notice giving rise to a right of appeal. This was signed on 14 July 2014.

4. The respondent then reconsidered the applications and refused them on 16 October 2014 in this case as agreed making decisions which gave rise to a right of appeal to the First-tier Tribunal. In each case the refusal letters stated

> "I have reconsidered your client's application under Article 8 of the European Convention for Human Rights taking into account Section 65 of the Borders, Citizenship and Immigration Act 2009 and the Immigration Rules put in place on 9 July 2012 under Appendix FM."

5. The grounds as drafted are summarised in the decision of First-tier Tribunal Judge Simpson in granting permission. It is said that Judge Coffey erred in considering the applications under the new Rules (that is, the Immigration Rules in force from 9 July 2013) as if the application had been made on or after 9 July 2012. Second the decision to proceed under the new Rules cast doubts on the overall fairness and lawfulness of the decision reached.

6. It is instructive to note at this point that in the grounds to the First-tier Tribunal the issue of whether, as was contended before me, the respondent had erred in considering the applications under the new Rules was not raised, instead the argument being that the respondent had improperly applied the provisions of the Immigration Rules.

7. The judge in a decision promulgated on 12 May did consider the Immigration Rules first and then went on to consider Article 8 outside the Immigration Rules and considered also the effect of Section 55 of the UK Borders Act 2009. As a preliminary matter I should record that Miss Akimtola did accept that the grounds of appeal to the Upper Tribunal did not include a challenge to the judge's approach and findings in respect of Article 8 outside the Immigration Rules. She sought permission to amend the grounds taking into account the points raised in her skeleton argument. This was opposed by Mr Avery for the Secretary of State.

8. I am not satisfied that it would be in the interests of justice to permit an amendment of grounds of appeal at this late stage, some four months after permission was granted. No notice of this application was provided and no application was made prior to the hearing.

9. Further, and in any event, I do not consider that it can be argued, for reasons which I will deal with later, that the judge erred in her approach to paragraph 276ADE or the Immigration Rules in general and further, there appears to me to be little or no merit in the submission that the judge's decision with regard to Article 8 outside the Rules was perverse and one to which she was not entitled to come.

10. I now deal with the formal grounds of appeal dealt with to the Upper Tribunal. The submission first is that the changes in the Immigration Rules brought in by HC194 did not apply. This issue is considered in detail in the decision of the Court of Appeal in **Singh and Khalid [2014] EWCA Civ 74**. These appellants are in the same position as one of the parties in that case (Mrs Khalid) who had made an Article 8 only application prior to 9 July 2012.

11. The issue is carefully set out and summarised in paragraph 56 of the decision of the Court of Appeal and it is this: it is when the changes were brought in on 9 July 2012 the Secretary of State was not entitled to take into account the provisions of the new Rules when making decisions on private and family life applications made prior to that date. It is also, however, clear as the Court of Appeal identified, that this position was altered by the changes to the Immigration Rules set out in HC565 specifically the introduction of a new paragraph A277C with effect from 6 September 2012. As of that date the Secretary of State was entitled to take into account the provisions of Appendix FM and paragraphs 276ADE to 276DH in deciding private and family life applications even if they were made prior to 9 July 2012.

12. In the circumstances I am satisfied that the Secretary of State did on the facts of this case act lawfully and that in considering the new Rules this is not a case in any event where there were any applicable Immigration Rules prior to 9 July 2012.

13. Accordingly it is simply not arguable, and Miss Akimtola did not seek to persuade me otherwise with any great effort, that this is a situation in which the decision of the decision of the Court of Appeal in **Singh & Khalid** does not apply and accordingly I do not consider that the judge made an error of law in considering the situation under the new Immigration Rules.

14. Second, and for completeness sake, I am not satisfied that the First-tier Tribunal Judge erred in concluding that the appellants did not meet the requirements of paragraph 276ADE given their ages and the length of time spent in the United Kingdom. There is no challenge to the conclusion that

they have not lived here for twenty years or that they were unable to return to Nigeria or that they would be unable to reintegrate to life there.

15. Thirdly, it is clear that the youngest child could not meet the requirement to have lived in the United Kingdom for seven years and that in respect of the older of the two children the judge was clearly entitled to conclude that he did not meet the requirement in paragraphs 276ADE to have lived here for seven years prior to the date of decision.

16. The First-tier Tribunal Judge adequately set out in her decision details of the children's life in the United Kingdom. It cannot be said that no proper regard was given to the children's best interests nor could it be said that there was improper consideration of all the relevant factors.

17. It is simply not arguable that the decision was not one open to the judge on the material before her and accordingly for these reasons I find that the decision of the First-tier Tribunal did not involve the making an error of law and I uphold it.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

2. No anonymity direction is made.

Signed Date: 14 January 2016

Upper Tribunal Judge Rintoul