Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/06185/2016
HU/06186/2016
HU/06187/2016
HU/06188/2016

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham	**Decision & Reasons Promulgated**
On 26th February 2018	**On 22nd March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

AOO
OAMO
ITO
IOVO
(ANONYMITY DIRECTIONS MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr M Azni, Counsel, instructed by RBM Solicitors
For the Respondent: Mrs M Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellants are a family of Nigerian citizens. They comprise AOO born on [ ] 1970, OAO his wife born on [ ] 1976, and their children ITO born on [ ] 2003 and IOVO born on [ ] 2007. The first Appellant AOO last arrived in the United Kingdom on 24th August 2007 when he was given leave to enter as a visitor. He had then joined the second Appellant who had arrived on 16th April 2005 and had also been given leave to enter as a visitor. The third Appellant joined them on 24th August 2007 when he was likewise given leave to enter as a visitor. The fourth Appellant was born in the UK. None of the Appellants embarked, and in 2014 made unsuccessful applications for leave to remain under the Immigration (European Economic Area) Regulations 2006. Ultimately all the Appellants applied for leave to remain under Appendix FM of HC 395. Those applications were all refused for the reasons given in a series of refusal letters all dated 17th February 2016. All the Appellants appealed, and their appeal was heard by Judge of the First-Tier Tribunal Lodge (the Judge) sitting at Birmingham on 24th March 2017. He decided to dismiss all the appeals for the reasons given in his Decision dated 1st April 2017. The Appellants sought leave to appeal that decision, and on 27th September 2017 such permission was granted. The grounds of application were restricted to an argument that the Judge had erred in law in considering the Article 8 ECHR rights of the two minor Appellants.

2. The only issue before the Judge was whether the third and fourth Appellants met the criteria of paragraph 276ADE(i) of HC 395. The Judge found that both the minor Appellants had resided in the United Kingdom for more than seven years and accepted that leave to remain should be granted to them unless there were powerful reasons to the contrary. As the Judge wrote at paragraph 30 of the Decision he found that it was not unreasonable to expect the Appellants to return to Nigeria and taking into account the public interest and the best interests of the children, the decision of the Respondent was proportionate.

3. At the hearing before me, Mr Azni argued that the Judge had erred in law in coming to this conclusion. Taking into account Section 117(6) of the Nationality, Immigration and Asylum Act 2002, the Judge had not found any powerful reasons preventing him from allowing the appeals. The Judge had merely referred to the immigration history of the family and had speculated that they had come to the UK with no intention of returning to Nigeria.

4. In response, Mrs Aboni referred to the Rule 24 response and submitted that there was no such error of law. The Judge had considered the private life of the children and in particular their linguistic abilities and had explained his reasons for finding that the decision of the Respondent was proportionate.

5. I find no material error of law in the decision of the Judge which I therefore do not set aside. I am satisfied that the Judge directed himself as to the correct test to be applied as regards minor Appellants residing in the UK

for seven years or more. The Judge treated the best interests of the children as a primary consideration, and also had due regard to the public interest when dealing with Appellants with a poor immigration history. However, as stated at paragraph 29 of the Decision, the Judge did not make the mistake of visiting the sins of the parents upon their children. The Judge carried out a careful analysis of the relevant evidence in paragraphs 17 to 28 inclusive of the Decision, and demonstrated that he had carried out the balancing exercise necessary for any assessment of reasonableness or proportionality. The Judge came to a decision open to him on the basis of that analysis and which he satisfactorily explained. That explanation included a consideration of whether there were powerful reasons why the appeals of the minor Appellants should not succeed.

6. For these reasons I find no material error of law in the decision of the Judge.

Decision

The making of the decision of the First-Tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeals to the Upper Tribunal are dismissed.

Anonymity

The First-Tier Tribunal made orders for anonymity which I continue for the same reasons as given by the First-Tier Tribunal.

Signed Date 21st March 2018

Deputy Upper Tribunal Judge Renton