Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/09034/2018
HU/09013/2018
HU/09018/2018
HU/09023/2018
HU/09028/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 March 2019	**On 25 March 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

OLALEKAN [G] (FIRST APPELLANT)
OMOTOLA [G] (SECOND APPELLANT)
[D G] (THIRD APPELLANT)
[A G] (FOURTH APPELLANT)
[T G] (FIFTH APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms R Moffatt, Counsel
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, citizens of Nigeria, have permission to challenge the decision of Judge Cohen of the First-tier Tribunal sent on 28 November 2018 dismissing his appeal against a decision made by the respondent on 28 March 2018 refusing to grant leave to remain on human rights grounds.

2. The appellants' grounds are four-pronged. It is asserted that the judge erred in:

   (i) failing to consider the claim with due care,

   (ii) failing to conduct a proper assessment of the best interests of the children,

   (iii) erroneously approaching the allegation of previous use of false documents and in conducting matters in a procedurally unfair manner, and

   (iv) adopting an erroneous approach to the documentary evidence relating to credibility assessment.

   I heard brief submissions from both representatives. Both agreed with me that this decision cannot stand.

3. Ground 1 draws attention to a number of references in the judge's decision entirely unrelated to the appellants' appeals. At paragraphs 25 to 27 the judge referred to entirely unrelated evidence from another case including references to Tanzania, a Dutch asylum claim and evidence from a person called Omar which were not applicable in this case. There were also mistakes in relation to the number of the first two appellants' children (references to two rather than three children) and other mistakes in the form of typos and unclear masculine and feminine and possessive pronouns.

4. Had these been the only matters on which the appellants' grounds relied I may have been prepared to regard the decision as sustainable. In relation to ground 2, I may also have been prepared to consider that notwithstanding the incorrect identification of two rather than three children, that the judge had at least attempted a satisfactory best interests of the child assessment.

5. However, I see no answer to ground 3. At paragraph 33 of the decision the judge stated:

   > "The appellant is seeking to remain in the UK on long residence grounds. He claims to have resided in the UK continuously since 1996. The appellant made a previous application for leave to remain in the UK on long residence grounds. The application was refused because it was found that he had sought to rely on unreliable documentation. I accept that the documentation submitted with the appellant's application was unreliable and contained many anomalies in respect of the dates and information contained within that documentation in respect of the appropriate tax codes used at the time and energy watch references on the documentation before its existence. The

> appellant however states that the documentation was not submitted by him and that documentation that he sought to rely on and he provided to the solicitor in support of his application was genuine."

6. In the refusal decision of 28 March 2018, the respondent refused the appellants' applications inter alia on grounds of suitability under Section S-LTR pertaining to paragraph 276ADE(1)(i) of the Immigration Rules because it was:

> "… noted that in support of your application for indefinite leave to remain submitted on 23 October 2010 you submitted a number of false documents in an attempt to gain leave to remain by deception, therefore you failed to meet S-LTR4.3 as indicated above."

This clearly referenced back to the decision made on 4 August 2015 refusing leave to remain in which a decision stating that there was a lack of suitability observed that:

> "With your application for ILR on the basis of your long residence submitted on 23 October 2010 you provided a number of false documents including payslips and energy bills in an attempt to gain leave to remain by deception. It is therefore deemed that your provision of false documents with your previous application is sufficient to indicate that it is undesirable to permit you to remain in the United Kingdom due to your character and conduct and you have been refused as unsuitable to be issued with leave to remain under S-LTR1.6 of Appendix FM."

7. However, none of the documents referred to by the respondent had been disclosed in the refusal decision. Instead the respondent relied solely on the conclusions of a 2011 refusal letter. Such non-production was contrary to the First-tier Tribunal Procedure Rules 2014 at Rule 24(1). Further, although making negative findings in relation to the documentation produced by the appellants in relation to their application in October 2010, the letter from the respondent dated 8 January 2011 did not apply any suitability requirements or their equivalent. Nor did the March 2018 decision address the fact that the respondent on 16 September 2014 had stated that the first appellant had lived in the UK for eighteen years and six months. That was at odds with the terms of the refusal in the 2011 and 2015 and 2018 decision letters doubting the claims to residence for such a long period. At the very least it was incumbent on the judge to address these apparent inconsistencies in the respondent's own assessment and to ensure that the appellants had full disclosure prior to the hearing of the documentation relied on.

8. There is also the difficulty that faced with the production by the respondent of the decision letter of January 2011 on the morning of the hearing, the appellants' representatives applied for the documentation relied on in relation to the doubts voiced by the respondent as to long residence to not be admitted. The judge made no reference to that application. The decision of the judge to proceed to assess the suitability

requirements without affording the appellants a proper opportunity to have the full documentation was a procedural error.

9. Turning to ground 4, the grounds take aim at paragraph 36 of the judge's decision:

> "The appellant has produced additional utility bills and letters from friends in support of his claim to have resided in the UK since 1996/1998. However, in the light of my adverse credibility findings in respect of the appellant above and the documentation that he has sought to rely upon and applying **Tanveer Ahmed** I attach no weight to that documentation."

That formulation evinces a plain error in the approach to assessment of documentation. What was required and is required by **Tanveer Ahmed** is that the evidence is considered as a whole and that documentation is considered as part of a holistic process of arriving at credibility findings.

10. There was also a fifth ground alleging error on the part of the judge in referring to an old appeal framework but I do not consider that identifies anything of materiality. For the above reasons, the decision of the judge cannot stand. In the nature of the errors identified, the case must be remitted to the First-tier Tribunal (not before Judge Cohen).

Direction

I make the following direction: that the respondent produces to the appellants' representatives within six weeks of the sending of this decision, the full set of documents referred to in the decision letter in support of the finding that the appellants fail to meet the suitability requirements of the Rules.

11. I note that the third appellant has now turned 7 which gives rise to the issue of whether or not the first two appellants can bring themselves within the ambit of Section 117B(6) of the Nationality, Immigration and Asylum Act 2002. That will also clearly need to be addressed at the next hearing.

To conclude:

The decision of the judge is set aside for material error of law;

The case is remitted to the FtT (not before Judge Cohen).

No anonymity direction is made.

Signed Date: 20 March 2019

Dr H H Storey
Judge of the Upper Tribunal