



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

Appeal Number: PA/08501/2019  
PA/08503/2019  
PA/08504/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 September 2020**

**Decision & Reasons Promulgated  
On 23 September 2020**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**B O O**

**M O O**

**O C O**

**[ALL MINORS]**

**NIGERIA**

**[ANONYMITY ORDER MADE]**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the appellants: Mr Oghekenekevwe Omoniruvbe, a solicitor with Church Street Solicitors

For the respondent: Mr David Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Anonymity order**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of B O O, M O O and O C O, all minors, who are the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of them in connection with these proceedings.*

**Any failure to comply with this direction could give rise to contempt of court proceedings.**

## **Decision and reasons**

1. The appellants appeal with permission against the decision of the First-tier Tribunal dismissing their appeal against the decision of the respondent to refuse them refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellants are Nigerian citizens and all are minors.
2. The appellants sought and received an anonymity order from the First-tier Tribunal. However, given that they are being represented by their father who is a solicitor and who is named in these proceedings, the anonymity order has been amended to limit it to identification of the appellants themselves.

## **Background**

3. The parents married in Nigeria on 8 December 2001 and the three appellants were born in 2002, 2006 and 2012 and are all Nigerian citizens. The appellants' father is now a British citizen and has two further children born here with his current partner.
4. The appellants and their parents came to the United Kingdom from Nigeria on 4 December 2016 with valid visit visas and claimed asylum based on a risk of female genital mutilation to the third appellant and their being unaccompanied asylum-seeking child (which they plainly are not).
5. The appeal of the appellants' mother was heard at Hatton Cross on 15 September 2017 and was dismissed. The account of a female genital mutilation risk to the third appellant in these proceedings, and/or a risk arising from their grandparents' Sango god religion, was comprehensively rejected. The First-tier Judge found that neither the mother nor the father (who represents his children in this appeal) was a truthful witness and that both were prepared to lie. That is a serious finding against a solicitor of the Supreme Court, but it does not appear that it was pursued at the professional level.
6. In August 2018, the parents separated, and the appellants' mother went to live with their paternal grandparents in the United Kingdom. The evidence of the children in their witness statements was that she remained in touch with them, but at the First-tier Tribunal hearing it was asserted that she had moved out of that address in early January 2019 and ceased having any contact with her children or the extended family.

7. The appellants also had asylum appeals pending as unaccompanied asylum-seeking children and it is with those appeals that we are concerned in these proceedings. The decision of First-tier Judge Shand in the mother's appeal in 2017 is the *Devaseelan* starting point for the First-tier Judge in these appeals.

### **First-tier Tribunal decision**

8. First-tier Judge Cameron in these appeals correctly identified the *Devaseelan* starting point set by Judge Shand in 2017. He accepted that these appellants were now living with their father as the parents had separated and their mother had moved in with their paternal grandparents. The judge rejected the assertion in witness statements and oral evidence that in January 2020, just a few weeks before the appeal hearing on 25 February 2020, the mother had left the paternal grandparents home and was now out of touch with the whole family.
9. At [51]-[53] in the First-tier Tribunal decision, the judge said that there was no additional evidence on the basis of which he could properly go behind Judge Shand's decision that the appellant's mother and father were not credible witnesses and that their account of the claimed risk was so riddled with discrepancies as to be totally lacking in credibility. He was not satisfied, to any standard, that there was a real risk of persecution or serious harm for them in Nigeria, particularly as their mother was an educated professional woman and internal relocation was an option even if there was a risk in the home area.
10. The judge found as a fact at [74] that these appellants currently with their father, following their parents' separation, but not that their father had sole responsibility. He rejected their evidence that they did not know where their mother had gone. He rejected their Article 8 ECHR claim, both within and outwith the Immigration Rules HC 395 (as amended). The appeals were dismissed on all grounds.
11. The appellants appealed to the Upper Tribunal.

### **Permission to appeal**

12. Permission to appeal was granted on all grounds by First-tier Judge Buchanan, who considered that the First-tier Judge had arguably erred in law in failing to deal with the Sango god religion element of the appellants' account. He did not exclude the appellants' claim that the First-tier Judge had failed properly to direct himself as to paragraph 298(i)(c) of the Immigration Rules HC 395 (as amended), and/or to give weight to the medical evidence that the appellants' father had attempted suicide in September 2019 and was a high suicide risk if they were to be removed, with reference to paragraph 298(i)(d).
13. The appellants also claimed that they were not here without leave, with reference to section 3C of the Immigration Act 1971, and that the First-tier

Judge erred in emphasising at [80]-[82] the public interest in removing those who are not entitled to be here.

14. Finally, the grounds contend that insufficient weight was given to the best interests of the three children the appellants' father has with his current partner, who are the half siblings of these appellants, and one of whom has autism. There was no evidence from the schools of any of the children to support any strong relationship between these appellants and their half-siblings, who are British citizens and would not have to leave the United Kingdom.

### **Rule 24 Reply**

15. There was no Rule 24 reply on behalf of the respondent.
16. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

17. I heard submissions from both parties. I do not consider that the First-tier Judge erred based on the very limited evidence before him in deciding that there was no evidence which should cause him to reopen the 2017 findings in Judge Shand's decision. The asylum and humanitarian protection claims, as well as any Article 3 ECHR claim, are bound to fail.
18. Nor is there any merit in the submissions under paragraph 298(i)(d).
19. I am satisfied, however, that the First-tier Judge failed properly to apply paragraph 298(i)(c) of the Rules, which at the material time was as follows:

"298. The requirements to be met by a person seeking indefinite leave to remain in the United Kingdom as the child of a parent...present and settled in the United Kingdom are that he:

- (i) Is seeking to remain with a parent...in one of the following circumstances:  
...(c) one parent is present and settled in the United Kingdom and has had sole responsibility for the child's upbringing *or the child normally lives with this parent and not their other parent; ...and*
- (ii) Has or had limited leave to enter or remain in the United Kingdom, and
  - (a) Is under the age of 18; ... and
- (iii) Is not leading an independent life, is unmarried, and has not formed an independent family unit; and *[all other qualifications not disputed]."*

[Emphasis added]

20. The findings in Judge Cameron's decision establish that these children normally live with their father, and not their other parent. They have had limited leave to enter and are all minors who do not lead an independent life, and so on. There is no issue about their father's ability to accommodate or maintain them.

21. On that basis, as Mr Clarke agreed at the hearing, these children are entitled to indefinite leave to remain in the United Kingdom.

## **DECISION**

22. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appeals under paragraph 287(i)(c) of the Immigration Rules HC 395 (as amended) on human rights grounds only.

Signed [Judith AJC Gleeson](#)  
2020

Date: 18 September

Upper Tribunal Judge Gleeson