



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

Appeal Numbers: IA/01065/2014  
IA/01073/2014  
IA/01078/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 December 2014**

**Determination Promulgated  
On 16 December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM**

**Between**

**MR OBEMEATA FRIDAY AIGBEFOH (FIRST APPELLANT)  
MRS MOYOSORE OMOBOLA AIGBEFOH (SECOND APPELLANT)  
MASTER GIFT OSIEGHAE AIGBEFOH (THIRD APPELLANT)  
(NO ANONYMITY DIRECTION)**

**Appellants**

**and**

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

**Respondent**

**Representation:**

For the Appellants: Mr M Kadiri, Mitchell Simmonds Solicitors  
For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of Nigeria. Obemeata Friday Aigbefoh's date of birth is 25 June 1971. He and the appellant, Moyosore Omobola Aigbefoh are married. Her

date of birth is 8 August 1976. Their child, the appellant, Gift Osieghale Aigbefoh's date of birth is 24 April 2005. There is a second child of the family who is not an appellant, Elijah Eronmosele Oluwatosin Aigbefoh who was born in the UK on 13 December 2011. I shall refer to Mr Obemeata Friday Aigbefoh as the appellant in this decision. He came to the UK in 2006 as a student. He was joined by his wife and their eldest child in 2011.

2. The Secretary of State refused the application in a decision dated 3 December 2013. The application was refused under the Immigration Rules in relation to the three appellants. There was no consideration of the application outside the Immigration Rules and the decision maker did not consider his or her duty under Section 55 of the Borders, Citizen and Immigration Act 2009 (the 2009 Act).
3. The appellant appealed against the decision of the Secretary of State and the appeal was dismissed by Judge of the First-tier Tribunal Russell in a determination that was promulgated on 8 October 2014 following an oral hearing at Taylor House on 23 September 2014. The appeal was dismissed under Article 8. The appellant appealed and permission to appeal was granted by First-tier Tribunal Judge R A Cox in a decision of 30 August 2014. Thus the matter came before me.

### **The Findings of the First-tier Tribunal**

4. The Judge made a number of findings, including the following:-
  12. I agree that the appellants cannot succeed under Appendix FM or para.276ADE, for the reasons given by the Home Secretary. Nonetheless, in *MF (Article 8-new rules) Nigeria* [2012] UKUT 00393 (IAC) the Upper Tribunal gave guidance on dealing with cases covered by the new immigration rules introduced by HC 194 on 9 July 2012. The Tribunal noted that the new immigration rules set out a number of mandatory requirements relating to article 8 cases, which make clear that if these requirements are not met, the article 8 claim under the immigration rules must be refused. However, the new immigration rules only covered article 8 claims brought under some, not all, parts of the Rules. Even if a decision to refuse an article 8 claim under the new immigration rules is found to be correct, judges must still consider whether the decision complies with Section 6 of the Human Rights Act 1998 and, in automatic deportation cases, whether removal would breach a person's rights under the ECHR (Section 33(2) UK Borders Act). Thus, the two stage approach to assessing Article 8 claims in the context of deportation and removal remains imperative as the new immigration rules do not encapsulate the guidance in *Maslov v Austria- 1683/03* [2008] ECHR 546, endorsed by the higher courts in the UK (see also *Izuazu (Article 8-new rules)* [2013] UKUT 00045 (IAC)).
  14. The appellants assert compelling and compassionate reasons mean that they should stay in the United Kingdom. I agree that there may be arguable good

grounds for granting leave outside the rules and I go on to consider their matter in relation to article 8

19. I start my enquiry as to whether the appellants' removal would engage the obligations of this country under article 8 ECHR by looking at the appellant's own evidence. The first appellant has been in the UK since 2006, with leave as a student, during which he can have had no expectation of permanent settlement, notwithstanding his evidence that he never intended to return to Nigeria. The second and third appellants have been here only since 2011, again with no expectation of being allowed to remain permanently.
20. I reject as without foundation the claim that the appellants have no family or friends in Nigeria. They are citizens of that country and the second and third appellants were living there as recently as 2011.
21. I reject as without foundation the existence of a family life between the first appellant and his sister in the UK over and above the normal ties of family. Both of them have formed families of their own and there is no evidence of emotional or other mutual dependence beyond normal familial ties.
22. There is no suggestion that the removal of the appellants would entail a splitting of the family; they would be removed as a unit. I find that the decision of the Home Secretary does not, therefore, represent an interference with their right to family life.
23. There is little evidence of attachment to the wider community in the UK. There are letters of support from the first appellant's sister and some letters from the church. The appellant appears to be working here but there is little evidence of his contribution to the economy in the form of tax and NI contributions or unusual value to a company. There is no further evidence of attachment in the form of letters from neighbours, friends, academic references, work references or membership of clubs, societies or voluntary work. I note that the appellants have accessed health care for the birth of their second child and have incurred further costs to the NHS.

### **The Grounds of Appeal and Oral Submissions**

5. The grounds of appeal seeking permission to appeal argue that the Judge, having found that there may be arguable grounds for granting leave outside the Rules, did not then go on to consider Article 8 as he should. The Judge did not take into consideration the appellant's evidence in relation to difficulties in returning to Nigeria. The Judge was wrong not to place reliance on the evidence of Angela Johnson, the appellant's sister. There is disagreement expressed in the grounds to the Article 8 balancing exercise conducted by the Judge. I heard oral submissions from both Mr Kadiri and Mr Melvin.

## **Error of Law**

6. The grounds seeking leave to appeal are unimpressive, but my concern is that the decision maker and the Judge did not properly consider the duty under Section 55 of the 2009 Act. The appellant raised issues in relation to his business and threats to his wife and family on return to Nigeria in a letter to the respondent which accompanied his application. However, the decision maker did not engage with this and neither did the Judge. There were references (albeit they were lacking in sufficient detail) to the difficulties on return in both the appellant and his wife's witness statements. The Judge did not make a finding in relation to this aspect of the appellant's evidence and he did not make a finding in relation to the best interests of the children. The two matters are obviously connected.
7. It appears to me that the information submitted to the respondent and the evidence before the First-tier Tribunal was not properly considered and there is no analysis of the best interests of either of the children in the decision letter or in the determination of the First-tier Tribunal.
8. The First-tier Tribunal should have concluded that the decision maker had failed to discharge the duties imposed by Section 55 of the 2009 Act and to have regard to the need to safeguard and promote the welfare of children concerned and to have regard to the statutory guidance and it did not do so. This is a material error of law.
9. I set aside the decision under Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and I remake the decision in accordance with Section 12(2)(b)(ii). The decision of the Secretary of State was not in accordance with the law, for the reasons elaborated above, I allow the appeal.
10. It is now incumbent on the Secretary of State to remake the decision in accordance with this judgment.

Signed Joanna McWilliam

Date 15 December 2014

Deputy Upper Tribunal Judge McWilliam