



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

Appeal Nos: IA/44435/44437/44439/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 22nd July 2014**

**Determination promulgated
on 25th July 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**OSCAR NSUBUGA
ANNROSE EDITH NSUBUGA
ESTHER NSUBUGA KUKIRIZA**

Respondents

For the Appellants: Mr J Vassiliou, of McGill & Co., Solicitors
For the Respondent: Mrs S Saddiq, Senior Presenting Officer

DETERMINATION AND REASONS

1. The parties are as described above, but in the rest of this determination are referred to as they were in the First-tier Tribunal.
2. The appellants put their case to the respondent and in the First-tier Tribunal solely on the basis of the best interests of the third appellant, as a child, outside the requirements of the Immigration Rules. At paragraph 26 of his determination promulgated on 26 February 2014 First-tier Tribunal Judge Farrelly said that removal would be a disruption to her education at a crucial time. He was “driven to the conclusion” that it was in her best interest to remain in the UK with her parents. He noted that although that was a primary consideration, it did not necessarily mean that the appeals had to succeed. He did not find other considerations to outweigh her interests. He said that view was “supplemented by the length of time the adults

have been here, their lawful presence and their integration and their limited prospects in Uganda.”

3. I doubt whether the judge was entitled to find that the prospects for the adult appellants in Uganda as compared with the UK were limited in any way which counted significantly in favour of allowing the appeals. However, that was plainly not the decisive point, which was the best interests of the third appellant alone at a critical stage of her education.
4. Those grounds refer to the case law and submit at (e) that to remove of the family to Uganda might “present a degree of interim disruption, but this would be a reasonable outcome” and at (f) that “the decision to refuse is not unreasonable”.
5. There was no difference between the parties on the cases and on the leading principles, although they derived opposite outcomes. Nor can there be any doubt that the judge referred himself to the main authorities.
6. Mrs Saddiq referred particularly to these paragraphs of EV (Philippines) and others [2014] EWCA Civ 874:
 34. In determining whether or not, in a case such as the present, the need for immigration control outweighs the best interests of the children, it is necessary to determine the relative strength of the factors which make it in their best interests to remain here; and also to take account of any factors that point the other way.
 35. A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens.
 36. In a sense the tribunal is concerned with how emphatic an answer falls to be given to the question: is it in the best interests of the child to remain? The longer the child has been here, the more advanced (or critical) the stage of his education, the looser his ties with the country in question, and the more deleterious the consequences of his return, the greater the weight that falls into one side of the scales. If it is overwhelmingly in the child's best interests that he should not return, the need to maintain immigration control may well not tip the balance. By contrast if it is in the child's best interests to remain, but only on balance (with some factors pointing the other way), the result may be the opposite.
7. Mrs Saddiq submitted that there was nothing in this case of sufficient strength in respect of the child's interests which tipped the balance away from maintaining the Immigration Rules and in favour of the appellants. The First-tier Tribunal did not correctly appreciate the weight to be given to immigration control, and had given too much importance to the desirability of the child living in the UK. The child was well looked after by loving and caring parents. There was nothing to suggest that her interests would be significantly damaged by moving to Uganda rather than remaining in the UK. The judge failed to consider the best interests of the child in the

context of his finding that but for that factor the appeals would fail. His decision should be reversed.

8. Mr Vassiliou submitted that the judge correctly took the starting point as being the best interests of children in remaining with both parents, but that was only a starting point. The judge was entitled to conclude that her interests would be best served by remaining in the UK with her parents. The case could be distinguished from Zoumbas because the present appellants do not have an unedifying immigration history. Their past is entirely creditable. The SSHD's grounds were wrong in asserting that Zoumbas was an authority that the judge should have found it not unreasonable for the family to return to Uganda. He had given the legal principles in that case full regard. Comparative educational provision comparatively in Uganda was only one of a number of factors. There was no material misdirection of law. Even if error were to be found, on the facts the decision should again be remade in the favour of the appellants.
9. I indicated that the SSHD's appeal would not succeed.
10. The SSHD's criticism was best made by reference to the passage cited above from EV. However, in my view the SSHD's grounds and submissions although framed in terms of error of legal approach, are, as shown particularly at (e) and (f), in substance that this decision is perverse and could not have been arrived at by any judge applying the correct legal approach to the primary (and essentially undisputed) facts.
11. This was not a case with a very emphatic answer in respect of the adverse effects on the child. If her parents chose to move to another country, taking her with them, that would hardly call for state intervention to prevent it. That would be one possible test of whether decisions show proper consideration of a child's best interests. Having said that, I am unable to find that no judge could properly have reached the proportionality assessment made here. The case was at highest for the appellants a finely balanced one, and the outcome may appear to be generous, even surprisingly generous; but the respondent falls short of showing legal error, rather than disagreement with the judge's final striking of the balance.
12. The SSHD's appeal is dismissed. The determination of the First-tier Tribunal shall stand.
13. No order for anonymity has been requested or made.



24 July 2014
Upper Tribunal Judge Macleman