



**UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER**

Appeal No. IA/04822/2014  
IA/04823/2014  
IA/04824/2014  
IA/04825/2014  
IA/02214/2014  
IA/02215/2014

**THE IMMIGRATION ACTS**

Heard at: City Centre Tower  
Birmingham  
On 13 July 2015

Decision and Reasons Promulgated:  
On 24 July 2015

Before

**Upper Tribunal Judge Pitt  
Deputy Upper Tribunal Judge McGinty**

Between

**Secretary of State for the Home Department**

Appellant

and

**Dorathy Nkiru Chuku  
Onyeka Iheoma Chuku  
Jideofor Ahamma Blessing Chuku  
Ijeoma Ugonwa Chuku  
Sylvia Chidinma Chuku  
Udo Samuel Chuku**

Respondent

Representation:

For the Appellant: Mr Smart, Senior Home Office Presenting Officer  
For the Respondent: Mr Olawanle, Del & Co Solicitors

**DETERMINATION AND REASONS**

1. This is an appeal against the decision promulgated on 2 December 2014 of

First-tier Tribunal Ferguson allowing the appeals of the appellants under Article 8 ECHR.

2. For the purposes of this decision we refer to the Secretary of State as the respondent and to Ms Chuku and her children as the appellants, reflecting their positions before the First-tier Tribunal.
3. The appellants are nationals of Nigeria. It is common ground that Mrs Chuku came to the UK with the children on 1 September 2005. They have lived here lawfully ever since with Mrs Chuku effectively acting as a single parent. The family has not claimed benefits.
4. As of the hearing before the First-tier Tribunal the family had been in the UK lawfully for 9 years. At the time of the hearing Sylvia was 23, Udo Samuel (Sam) was 20 and Onyeka was 18. Jidefor and Ijeoma were minors, aged 15 and 12 respectively.
5. It was also not disputed that Mrs Chuku has been working supervising contact sessions for the Children's Services department of her local authority. Sylvia obtained a law degree from Nottingham Trent University and is qualifying as a solicitor. Sam has an offer to study for a degree at Leicester University. He has "severe" sickle cell disease for which he receives ongoing treatment including counselling on managing his condition. Onyeka has qualified as a chef. Jidefor and Ijeoma are in secondary education where their progress is above average if not "excellent".
6. First-tier Tribunal Judge Ferguson first considered the applications under Appendix FM of the Immigration Rules. He found at [32] that Onyeka, Jidefor and Ijeoma met the provisions of paragraph 276DE (iv) as they were under the age of 18 (as of the date of the application), had lived continuously in the UK for at least 7 years and it would not be reasonable to expect them to leave the UK.
7. The respondent's first ground challenges the finding that it would not be reasonable to expect Onyeka, Jidefor and Ijeoma to leave the UK.
8. We did not find any legal error in the decision of Judge Ferguson as regards Onyeka, Jidefor and Ijeoma.
9. The judge was correct at [27] to refer to and rely on the guidance in Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 00197 (IAC), the head note of that case stating:
  - i) It is generally in the interests of children to have both stability and continuity of social and educational provision and the benefit of growing up in the cultural norms of the society to which they belong.
  - ii) Lengthy residence in a country other than the state of origin can lead to development of social cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the

contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period.

- iii) Apart from the terms of published policies and rules, the Tribunal notes that seven years from age four is likely to be more significant to a child than the first seven years of life. Very young children are focussed on their parents rather than their peers and are adaptable.”
10. The judge was equally entitled to place weight at [28] on the fact of 9 years’ lawful residence, the good progress through the education system and that, at [29], the disruption to the lives of the three younger children if returned to Nigeria would be “very significant”. It was permissible to consider factors highlighted at [35] of *EV (Philippines) v SSHD* [2014] EWCA Civ 874 regarding their ages, length of residence, length of time in education, stage of education reached and so on, particularly where they reflect closely the respondent’s position at 11.2.4 of her guidance document “*Immigration Directorate Instruction Family Migration: Appendix FM Section 1.0b - Family Life (as a Partner or Parent) and Private Life: 10-Year Routes*”.
11. The written grounds, to our minds, only disagree with the decision of the First-tier Tribunal. The Immigration Rules required an assessment of what was “reasonable” and that assessment was carried out with reference to the material factors. The suggestion that the judge placed too much weight on the best interests of the children misrepresents the correct approach taken by the judge to that facet of the “reasonableness” assessment. Reference is made to best interests only at [29] within the overall assessment of reasonableness at [25] to [32]. It is to misread the decision to suggest that too much weight was given to the best interests of the children, identified as having stable social and educational provision, when this was only one of a number of material factors that led the First-tier Tribunal to the conclusion that it was not reasonable to expect them to return to Nigeria, that assessment necessarily focussing on the situation of the children.
12. Paragraph 1c) of the grounds is manifestly mere disagreement with the finding as to the severity of the disruption for Onyeka, Jidefor and Ijeoma if forced to return to Nigeria. There is no suggestion in the decision that the judge introduced elements of “legitimate expectation” to remain in the UK or “future right” to education referred to in the grounds at 1d), that submission, again, really only amounting to disagreement, the same being so for the argument at 1e).
13. Paragraph 1f) of the grounds appeared to us to be misconceived where it refers to a “reasonableness” test being applied to Sam’s medical condition when the First-tier Tribunal dealt with that factor correctly in a second stage Article 8 assessment and not under the “reasonableness” provisions of paragraph 276ADE of the Immigration Rules. As indicated by the First-tier Tribunal judge, Sam’s health could not be a determinative

factor in the Article 8 proportionality assessment but that did not mean that no weight attracted to it at all.

14. We also did not find, as submitted by Mr Smart, that the First-tier Tribunal weighed the public interest incorrectly at [32] when stating:

“In the balance on the other side there is nothing in the immigration history of any of the appellants or the manner in which they have conducted themselves while in the United Kingdom lawfully which requires increased weight to be given to the maintenance of effective immigration control”.
15. In our view, this was a reference to the citation from [37] of EV (Philippines) in the previous but one paragraph which refers to the public interest as the “balance on the other side” and to situation where there may be adverse factors adding to the weight attracting to the public interest. The judge merely found there were no such additional factors here. That does not mean he failed to weigh the public interest in effective immigration control correctly.
16. Put simply, we saw no error in the decision that Onyeka, Jidefor and Ijeoma met the Immigration Rules.
17. Where that is so, the grounds do not really challenge the finding that Mrs Chuku met the provisions of paragraph EX.1. of R-LTRPT 1.1(d) of Appendix FM where she has a genuine and subsisting relationship with children under the age of 18 who have lived in the UK for more than 7 years and it would not be reasonable for those children to leave the UK.
18. The challenge to the second stage Article 8 assessment for Sylvia and Sam is stated to be on the same grounds as those argued regarding the three younger children which we have not found to have any merit. The First-tier Tribunal referred himself correctly and in terms at [38] to the provisions of section 117B of the Nationality, Immigration and Asylum Act 2002, referring again at [39] to the public interest being served by effective immigration control. The undisputed profile of Sylvia and Sam and the rest of family clearly entitled the FTTJ here to find the public interest was outweighed by other factors.
19. For these reasons we did not find that the grounds showed that Judge Ferguson erred in his approach to the legal tests or application of those tests to the material evidence.

## DECISION

20. The decision of the First-tier Tribunal does not contain an error on a point of law and shall stand.

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Signed:   
Upper Tribunal Judge Pitt

Date: 23 July 2015