



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/13032/2014

Upper Tribunal Appeal Number:

IA/13052/2014

IA/13054/2014

First-tier Tribunal Appeal Number: IA/45172/2014

IA/45179/2014

IA/45197/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 05 August 2015**

**Decision Promulgated
On 11 September 2015**

Before

**UPPER TRIBUNAL JUDGE STOREY
UPPER TRIBUNAL JUDGE CANAVAN**

Between

O O-A

First Appellant

A E A

Second Appellant

FA

Third Appellant

**(ANONYMITY DIRECTION MADE
IN RESPECT OF THE THIRD APPELLANT ONLY)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V. Chikwe of St. Valchikwe Solicitors

For the Respondent: Mr T. Melvin, Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

No anonymity direction was made by the First-tier Tribunal. We find that no particular issues arise on the facts of the first and second appellants' case that might infringe their protected rights if the details were to become known publicly. For this reason no anonymity direction is made in relation to the first and second appellants.

The third appellant is a minor and for this reason we find that it is appropriate to make an anonymity direction. Unless and until a tribunal or court directs otherwise, the third appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The first two appellants are citizens of Nigeria who have been refused leave to remain on human rights grounds. The third appellant is their dependent daughter who is 16 years old.
2. The appellants have another daughter, VA, who is 21 years old. She was the fourth appellant at an earlier stage of the appeal process. On 10 October 2014 she was granted leave to remain in her own right because she met the private life requirements contained in paragraph 276ADE of the immigration rules. Subsequent to that her appeal was withdrawn.
3. For reasons that are explained in more detail below, the Upper Tribunal is rehearing the original appeals (IA/12032/2014, IA/13052/2014 and IA/13054/2014) ("the first set of appeals") after having set aside the decision of the First-tier Tribunal in a decision promulgated on 05 June 2015. It became apparent at the hearing before the Upper Tribunal on 27 May 2015 that the appellants had lodged further appeals in the First-tier Tribunal (IA/45172/2014, IA/45179/2014 and IA/45197/2014) ("the second set of appeals").
4. Given that the substantive issues arising in both appeals are the same, the Upper Tribunal decided to link the appeals sitting as the Upper Tribunal and in our capacity as First-tier Tribunal judges. The substantive issues are exactly the same in both sets of appeals. As such our reasons are the same in both sets of appeals. This decision therefore serves as a decision of the Upper Tribunal in relation to the first set of appeals and a decision of the First-tier Tribunal in relation to the second set of appeals.

Background

5. It is not clear from the evidence exactly when the family entered the UK. The appellants claim that they entered the UK on visit visas in 2004. However, in an application for an EEA residence card made in 2008 the respondent says that the first appellant claimed that she entered the UK in 2007. It is not disputed that they overstayed once their visit visas expired.
6. The parents' immigration history is characterised by numerous applications for leave to remain on various different grounds. The exact chronology and the nature of each application is not clear from the evidence currently before the Tribunal. Both parents made separate applications for EEA residence cards. The first appellant applied for an EEA residence card as an extended family member in 2008 and 2010 but both applications were refused. The refusal letter relating to the application made in 2010 names three other people in the application but none of them are the family members named in these appeals. It is possible that one was the first appellant's son but it is unclear whether he is still in the UK or is now in Nigeria. It is unclear on what basis the first appellant claimed to be entitled to an EEA residence card.
7. The respondent's skeleton argument states that the second appellant also made an application for an EEA residence card but it is not clear when the application was made or on what basis. It is said that he was issued with an EEA residence card that was valid until 2015 but the card was revoked on 15 November 2011. Again, there is no evidence to show on what basis the EEA residence card was revoked.
8. It is said that the first appellant and her two daughters made an application for leave to remain outside the immigration rules on 16 June 2011. The second appellant did not form part of the application. The appellants' skeleton argument states that the application raised protection issues relating to a fear of forced circumcision in Nigeria. The application was refused. There is no evidence to show the exact grounds on which the application was made or the reasons for refusal but the first appellant's witness statement suggests that the claim was likely to be based on the appellant's assertion that her husband would force her to be circumcised if she returned to Nigeria. Given that the first appellant's evidence is that her husband had been living with her in the UK since 2004, and she later reneged on the claim, it seems highly likely that the protection claim she made in 2011 was unfounded.
9. On 27 June 2012 the first and second appellants made an application for leave to remain outside the immigration rules on human rights grounds. Their two daughters were included in the application. The application was refused on 27 June 2013 with no right of appeal. The appellants sought to

challenge the decision by way of judicial review and in response the respondent agreed to reconsider the decision.

10. On 27 February 2014 the respondent refused the application. The respondent was not satisfied that the parents met the requirements of Appendix FM or paragraph 276ADE of the immigration rules. Although it was accepted that the youngest daughter had resided in the UK for a continuous period of 7 years, it was considered reasonable to expect her to return to Nigeria with her parents. The oldest daughter was 19 years old but had not lived in the UK for more than half her life so did not qualify for leave to remain under paragraph 276ADE. The appellants were given a right of appeal.
11. The exact course of the judicial review proceedings is unclear from the evidence currently before the Tribunal. It seems that the proceedings continued in parallel to these events despite the fact that the appellants had lodged an appeal to the First-tier Tribunal, which should have brought the judicial review proceedings to an end because the appellants had an alternative remedy. However, we are told that a Consent Order was agreed on 06 June 2014. As a result the respondent conducted a further review of the cases apparently in ignorance of the fact that there was an ongoing appeal.
12. In the meantime the appellants' appeal before the First-tier Tribunal was heard on 26 September 2014. For unknown reasons the decision was delayed by several months and was not promulgated until 10 February 2015. The First-tier Tribunal Judge dismissed the appeal.
13. On 10 October 2014 the respondent decided to grant their oldest daughter (who was now an adult) leave to remain because she met the requirements of paragraph 276ADE(1)(v) (being aged between 18-25 and having spent half her life living continuously in the UK). However, the respondent maintained the decision to refuse leave to remain to the first, second and third appellants in a decision dated 27 October 2014.
14. The respondent's further decision was made after the First-tier Tribunal hearing but before the First-tier Tribunal decision was promulgated in February 2015. As such the First-tier Tribunal Judge was not aware of the developments when he dismissed the appeal. The First-tier Tribunal Judge made damning credibility findings relating to the immigration history of the first and second appellants. He found the first appellant to be particularly mendacious in light of her constantly changing evidence, and at one point, her apparent attempt to conceal the presence of her husband in the UK [33]. He rejected her protection claim entirely [34]. The second appellant did not attend the hearing to give evidence. As a result the First-tier Tribunal Judge had doubts whether there was family life between the second appellant and his wife and two daughters [36]. The First-tier

Tribunal Judge was careful not to take into consideration the misconduct of the parents when considering the best interests of the children [33] but concluded that in the circumstances of this case it would be reasonable to expect the appellants to return to Nigeria as a family unit [39].

15. The appellants were granted permission to appeal to the Upper Tribunal. At the hearing on 27 May 2015 it became apparent that the respondent made fresh decisions in October 2014 and granted the oldest daughter, VA, leave to remain. For the reasons given in our decision dated 05 June 2015 we found that the grounds of appeal had no merit and amounted to no more than disagreements with the First-tier Tribunal decision (see Appendix). However, in light of the fact that VA was granted leave to remain before the First-tier Tribunal decision was promulgated we concluded that this development was capable of giving rise to an error on the face of the record. After having taken into account what the First-tier Tribunal Judge's said at paragraph 37 of the decision, it was at least possible that separation of the family members might have made a difference to the First-tier Tribunal Judge's view of the case in light of what he said at paragraphs 36-37 of the decision:

“36.there would be no interruption of that family life if the three - or four - are returned together, none of them having any right to remain in the United Kingdom. In the absence of a breach, therefore, there is actually no further need to consider the analysis, but for the purpose of completion I shall do this.

37. Had there been a breach - had some been returned and another not - then it would be serious one. “

16. The first and second set of appeals were joined and listed for hearing on 05 August 2015. The findings of fact made by the First-tier Tribunal in the first set of appeals were preserved. The hearing was to focus on how the change in circumstances, following the grant of leave to remain to the oldest daughter, might affect the other three appellants. Directions were made for further evidence and any further arguments to be served in relation to that issue.

Decision and reasons

Best interests of the child

17. In assessing the best interests of the child we have taken into account the statutory guidance “UKBA Every Child Matters: Change for Children” (November 2009), which gives further detail about the duties owed to children under section 55. In that guidance the UKBA acknowledges the importance of a number of international instruments relating to human rights including the UN Convention on the Rights of the Child (UNCRC). The guidance goes on to confirm: “*The UK Border Agency must fulfil the requirements of these instruments in relation to children whilst exercising*

its functions as expressed in UK domestic legislation and policies." We take into account the fact that the UNCRC sets out rights including a child's right to survival and development, the right to know and be cared for by his or her parents, the right not to be separated from parents and the enjoyment of the highest attainable standards of living, health and education without discrimination. The UNCRC also recognises the common responsibility of both parents for the upbringing and development of a child.

18. We have also taken into account the decisions in *ZH (Tanzania) v SSHD* [2011] UKSC 4, *Zoumbas v SSHD* [2013] UKSC 74 and *EV (Philippines) and others v SSHD* [2014] EWCA Civ 874. The best interests of the child are a primary consideration in this case but may be outweighed by the cumulative effect of other matters that weigh in the public interest. We take into account that the younger the child the more important the involvement of a parent is likely to be: see *Berrehab v Netherlands* (1988) 11 EHRR 322. It is in the best interests of a child to be brought up by both parents unless it is contrary to his best interests to see one or other of his parents: see also *E-A (Article 8 - best interests of child) Nigeria* [2011] UKUT 00315.
19. FA is 16 years old and although her exact date of entry is unclear it is likely that she has lived in the UK for a period of at least 10 years. She arrived in the UK at a young age and has lived here during an important formative period of her life. The appellants' bundle contains a number of school reports and certificates. We have no reason to doubt that she has been attending school and has been progressing well with her education since she arrived in the UK. The appellants have produced very little other evidence of the extent of her ties to the UK. FA's statement prepared for the First-tier Tribunal hearing was drafted in a way more redolent of a skeleton argument. It does not provide any meaningful detail about her life in the UK or explain how removal might impact on her life. Very little of her own voice is contained in the statement.
20. Despite the fact that the Tribunal made directions for further statements to be provided on the narrow issue to be determined, the appellants' representative only prepared a further brief statement from the first appellant in support of this appeal. When asked if he intended to call any evidence Mr Chikwe said that he did not think it was necessary. Again, the statement is drafted more in the form of a legal argument and does not provide any meaningful detail about the impact that it would have on the family if VA decided to remain in the UK and the appellants had to return to Nigeria. No up to date statements were drafted from VA or FA to outline the nature of their sibling relationship or to explain how it would impact on the girls if they were to be separated. The first appellant's statement merely states that it would be irrational to separate the family and would breach Article 8 if her daughters were separated.

21. In assessing the best interests of the child we bear in mind the factors outlined by the Court of Appeal in *EV (Philippines)*. We conclude that very little evidence has been produced to show the extent of FA's ties to the UK, the strength of her relationship with her adult sibling or the effect that removal would have on the girls. We have no reason to doubt that in the 10 year period FA has lived in the UK that she has forged ties with friends and has also benefited from being able to continue her education in the UK. Given her age it is likely that she has just completed her GCSE exams but has not yet embarked on her A levels. After such a long period of time she is likely to be well integrated into life in the UK. But FA is not a British citizen. She has lived with her parents throughout the time that she has been in the UK. It is likely that she continues to have connections with the Nigerian community through her parents and will not be unfamiliar with Nigerian culture. It is not clear whether she speaks any Nigerian languages but English is widely spoken there. If she were to return to Nigeria her parents would be able to assist her to renew her connections with her country of origin. There is no evidence to suggest that FA suffers from a serious medical condition or that she has any other particular vulnerability that would be relevant to the assessment of her best interests.
22. We have considered FA's circumstances as a whole within the context of the limited evidence that has been produced in support of this appeal. We conclude that it is likely to be in her best interests to remain with her parents. Although education and healthcare facilities are available in Nigeria it is likely to be more readily available and of a better quality in the UK. No doubt the main reason why the first and second appellants brought the girls to the UK was with the intention of providing them with a better life. While we conclude that it is likely to be in FA's best interests to remain in the UK where she has access to better healthcare and education facilities we conclude that it is only marginally in her best interest. There is insufficient evidence before us to conclude that her best interests point strongly towards her remaining in the UK.

Immigration rules

23. The original application for leave to remain on human rights grounds was made on 27 June 2012. At the time the application had to be made outside the rules. The application predated the major changes that took place to the immigration rules on 09 July 2012, which incorporated private and family life requirements into the immigration rules. The case is complicated by the fact that the respondent has made several decisions in response to the original application on 27 June 2013, 27 February 2014 and 27 October 2014. Paragraph 276ADE, which sets out the private life requirements, has been amended on several occasions and different tests applied on the different dates that decisions were taken.

24. The first and second appellants do not have leave to remain and do not meet the requirements of the immigration rules for the reasons already given by the First-tier Tribunal Judge in his earlier decision. They have not been resident in the UK for a continuous period of 20 years for the purpose of paragraph 276ADE(1)(iii). In light of the fact that the first and second appellants grew up in Nigeria and came to the UK when they were well into adulthood they are unable to show that, at the date of the application, they had no ties (including social, cultural or family) in Nigeria for the purpose of paragraph 276ADE(1)(vi) (the previous test at the date of the decisions in June 2012 and February 2014 i.e. the subject of the first set of appeals). The immigration rules have since been amended and the test is now whether there are “very significant obstacles” to reintegration (the test at the date of the decision made in October 2014 i.e. the subject of the second set of appeals). However, for the same reasons we conclude that the first and second appellants would face no such obstacles given their age on arrival in the UK. They worked for many years and were able to support their family in Nigeria before they came to the UK. They complain that it would be difficult to re-establish themselves there, but there is no evidence to suggest that they would in fact face “very significant obstacles” within the meaning of the immigration rules.
25. The case therefore hinges on whether it would be “reasonable” to expect FA to leave the UK with her parents in circumstances where her sister has now been granted leave to remain in her own right. The test is relevant to whether she meets the requirements of paragraph 276ADE(1)(iv) and whether her parents, as a result of her length of residence, also meet the requirements of paragraph EX.1 of Appendix FM. The “reasonableness” test was contained in both parts of the immigration rules at the date when all three refusal decisions were made.
26. We are conscious of the fact that FA has lived in the UK for the same period of time as her older sister. VA has now been granted leave to remain because her length of residence was such that she met the private life requirements of the immigration rules at the relevant time. A lay person may consider that if one daughter is granted leave because she has established connections to the UK that are worthy of protection that the other should be granted leave to remain as well in circumstances where she has lived in the UK for the same length of time.
27. However, we find that there are some qualitative differences between the different parts of paragraph 276ADE(1)(iv) and (v) that are underpinned by legitimate public policy issues. Paragraph 276ADE(1)(v) provides for a young adult between the age of 18-25 who has spent more than half her life in the UK to be granted leave to remain. The person has spent a significant portion of her life in the UK, and as a young adult, it is likely that she is beginning to develop her own ties to the UK outside that of her

close family. The young adult is moving towards establishing an independent life of her own.

28. In contrast, a child who is under 18 years of age is still considered to be dependent upon her parents. Her ties to the UK might still be strong, and where there is sufficient evidence to show that it would not be reasonable to expect the child to leave the UK, she will meet the requirements of paragraph 276ADE(1)(iv). However, because the child is still dependent upon her parents the assessment of whether it is reasonable to expect her to leave the UK needs to take into account other factors. The best interests of the child are a primary consideration that must be given significant weight but can be outweighed by the cumulative effect of other public interest factors.
29. In this case we have found that it is only marginally in FA's best interests to remain in the UK with her parents because she would be able to access better education and healthcare facilities than she would in Nigeria. However, those facilities are available in Nigeria albeit that they might not be quite the same standard. We find that there is insufficient evidence to show how close her relationship to her older sibling is or to show what the effect of separation would be. While it is understandable that, as sisters, they are likely to have a bond of affection, there is insufficient evidence before us to show that their relationship goes beyond the normal emotional ties between an adult sibling and her younger sister. There no evidence before us to show that there would be any particularly harsh or detrimental effect on FA if she returned to Nigeria and her sister decided to remain in the UK. Her parents would be able to support her and she would still be able to keep in contact with her older sister.
30. We were told that VA is still part of the family unit and does not yet live independently. However, at 21 years old she is now of an age where she could begin to forge an independent life outside her family. She hopes to attend university, which is a time when many young adults take the step of leaving their family home. She has been granted leave to remain because of her individual ties to the UK and not as part of the family unit. There is no evidence to suggest that VA is particularly vulnerable or would not be able to look after herself if she remained in the UK without her family. She would be able to continue to keep in contact with them by telephone, messaging, social networks and Skype and could make periodic visits to Nigeria. Nothing in that pattern of contact would be particularly unusual for a young adult of her age.
31. We conclude that insufficient evidence has been produced to show that there is any dependency beyond the normal emotional ties found between an adult daughter and her parents and younger sibling such that it would be unreasonable to expect the rest of the family to return to Nigeria. VA has been granted leave to remain and is not liable to removal from the UK

with the rest of her family but it would be a matter for her whether she returned to Nigeria with them if she decided that she wanted to remain with the family unit rather than remain in the UK in order to establish an independent life.

32. We have made detailed findings relating to FA's interests and treat them as a primary consideration. However, we must also consider the very poor immigration history of her parents outlined by the First-tier Tribunal Judge in his decision. It seems quite clear from that history that there is a strong public interest in the maintenance of immigration control. The first and second appellants remained in the UK in the full knowledge that they had no leave to remain and made a number of unfounded applications. It is understandable that they might have wanted a better life for themselves and their children but their actions undermine the effective administration of the system of immigration control. We take into account the fact that the child should not suffer as a result of the behaviour of her parents, but in certain cases the cumulative effect of other factors might still outweigh the best interests of the child.
33. While we acknowledge that FA is likely to face some initial difficulties readjusting to life in Nigeria we consider that, in the absence of any compelling evidence relating to the effect of the possible separation of the family, the cumulative effect of the public interest considerations are capable of outweighing the best interests of the child on the facts of this particular case. FA is still dependent upon her parents and we conclude that it would not be unreasonable to expect her to return to Nigeria with them. There is no evidence to suggest that they would be unable to provide her with adequate care. They lived in Nigeria for many years before coming to the UK. They would be able to support her and assist her to reintegrate. Both secondary and higher education is available in Nigeria. For these reasons we conclude that the first and second appellants do not meet the requirements of paragraph EX.1 and that the third appellant does not meet the requirements of paragraph 276ADE(1)(iv) because it would be reasonable to expect the dependent child to leave the UK with her parents.

Article 8 (private and family life)

34. In this case we have already considered all the factors that are relevant to the assessment of Article 8 outside the rules and as such do not consider it necessary to make detailed findings.
35. Article 8 of the European Convention on Human Rights protects the right to private and family life. However, it is not an absolute right. The state is able to lawfully interfere with an appellant's private and family life as long as it is pursuing a legitimate aim and it is necessary and proportionate in all the circumstances of the case. The starting point is the basic principle

that a state has the right to control the entry and residence of people within its borders. There is a strong public interest in maintaining an effective system of immigration control. This is done through the immigration rules and policies, which set out the requirements for leave to enter or remain in the UK. The immigration rules and policies are the main guide to what decisions are likely to be considered reasonable and proportionate. It is still possible for cases that fall outside those requirements to engage the operation of Article 8 but only if there are compelling circumstances that are not sufficiently recognised under the immigration rules: see *Huang v SSHD* [2007] UKHL 11, *Patel & Others v SSHD* [2013] UKSC 72, *R (on the application of MM & Others) v SSHD* [2014] EWCA Civ 985 and *SS (Congo) v SSHD* [2015] EWCA Civ 387.

36. Although there is little meaningful evidence before us, we find that it is likely that the appellants have established a private life in the UK as a result of their length of residence. As such, we find that removal in consequence of the decision is likely to interfere with that right in a sufficiently grave way as to engage the operation of Article 8 (questions (i) & (ii) of Lord Bingham's five stage approach in *Razgar v SSHD* [2004] INLR 349).
37. The appellants do not meet the requirements of the immigration rules and the normal course of action would be to require them to leave the UK. In assessing what weight to place on the public interest, where relevant, the Tribunal must take into account section 117B (general) and 117C (deportation) of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002"), which outlines a number of factors that the Tribunal must consider when assessing whether an interference with a person's right to respect for private and family life is justified and proportionate.
38. The maintenance of an effective system of immigration control is in the public interest. The appellants speak English but this a neutral factor that does not weigh in favour of them remaining in the UK. It is unclear from the evidence how the first and second appellants have supported the family while in the UK or whether they have been a burden on the taxpayer. Any private life that the first and second appellants have established in the UK should be given little weight because it was established at a time when they knew that they had no leave to remain. In any event, there is very little evidence to show that they have established any significant ties beyond mere length of residence. In FA's case we place weight on the private life that she has established in the UK during an important developmental period of her life. It is not her fault that she was brought to the UK and remained without leave. That was the responsibility of her parents.
39. We have given particular consideration to section 117B(6) which states that the public interest will not require a person's removal where they

have a genuine and subsisting parental relationship with a qualifying child and it would not be reasonable to expect the child to leave the UK. The wording of this test echoes the wording of paragraph 276ADE(1)(iv) and paragraph EX.1 of the immigration rules and we can see no significant difference in the way the test should be applied. We have already given detailed reasons why we consider that it would be reasonable to expect the dependent child to leave the UK with her parents on the facts and evidence produced in support of this appeal. The appellants have failed to produce sufficient evidence to show that there are any compelling circumstances that would render their removal disproportionate. For these reasons we conclude that removal in consequence of the decision would not amount to a disproportionate interference with the appellants' rights under Article 8 of the European Convention (points (iv) & (v) of Lord Bingham's five stage approach in *Razgar*).

40. For the reasons given above we conclude that for the purpose of both sets of appeals the appellants have failed to produce sufficient evidence to show that they meet the requirements of the immigration rules or that their removal in consequence of the decision would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with their rights under Article 8 of the European Convention.

DECISION

In relation to the first set of appeals (Upper Tribunal)

We re-make the decision and DISMISS the appeals under the immigration rules and on human rights grounds

In relation to the second set of appeals (First-tier Tribunal)

We DISMISS the appeals under the immigration rules and on human rights grounds

Signed 
Upper Tribunal Judge Canavan

Date 09 September 2015

[APPENDIX]



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

Appeal Number: IA/13032/2014
IA/13052/2014
IA/13054/2014

THE IMMIGRATION ACTS

**Heard at Field House
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Determination Promulgated

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Respondent

Representation:

For the Appellant: Mr V. Chikwe of St. Valchikwe Solicitors

For the Respondent: Mr T. Melvin, Senior Home Office Presenting Officer

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No anonymity direction was made by the First-tier Tribunal. We find that no particular issues arise on the facts of the first and second appellants' case that might infringe their protected rights if the details were to become known publicly. For this reason no anonymity direction is made in relation to the first and second appellants.

The third appellant is a minor and for this reason we find that it is appropriate to make an anonymity direction. Unless and until a tribunal or court directs otherwise, the third appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Background

1. In a decision promulgated on 10 February 2015 First-tier Tribunal Judge Dennis dismissed the appellants' appeal against a decision to refuse to grant them leave to remain in the UK on human rights grounds and to remove them from the UK under section 10 of the Immigration and Asylum Act 1999.
2. The judge was not satisfied that the appellants met the requirements of Appendix FM or paragraph 276ADE of the immigration rules and concluded that their removal would not amount to a breach of Article 8 of the European Convention outside the rules in light of their immigration history and the fact that it was reasonable to expect them to return to Nigeria as a family unit.
3. The appellants appealed on the ground that there was a significant delay in promulgating the decision and as a result the judge made errors of fact. It was alleged that the decision was "riddled with speculation". It was also argued that the judge failed to properly apply the approach set out in *Razgar v SSHD* [2004] UKHL 27. It was alleged that the judge erred in considering whether the appellants met the terms of the current immigration rules because the original application was made prior to 09 July 2012, when the new rules were introduced. Permission to appeal was granted largely on the basis that it was arguable that the judge erred in relation to whether the immigration rules were applicable to the case. Whilst noting that the other grounds were "rather imprecise" and that it was unlikely they would disclose a material error of law, permission was granted on all grounds.
4. The matter came before us to determine whether the First-tier Tribunal erred in law.

Submissions

5. On behalf of the appellants Mr Chikwe expanded on the grounds of appeal. He asserted that the judge made errors of fact about the first appellant's date of birth and certain aspects of their immigration history. He alleged that the judge was biased and referred to passages in the decision where the judge made negative findings. He said that the judge erred because he failed to take into account the skeleton argument he had submitted at the hearing and failed to apply the principles set out in *Razgar*. He asserted that the judge should have applied the rules as they were before 09 July 2012.
6. In response Mr Melvin submitted that the first appellant's date of birth was not material to the decision. There was no evidence of bias and the judge's findings were open to him on the evidence relating to the appellants' immigration history. Any errors of fact made in the decision were not material to the overall findings in relation to the immigration rules or Article 8. He argued that the judge did not make a mistake in applying the current immigration rules following the Court of Appeal judgment in *Singh v SSHD* [2015] EWCA Civ 74.
7. A new issue had arisen because the appellant's oldest daughter VA (DOB: 04/07/94) was granted leave to remain on 10 October 2014 i.e. after the hearing but before the First-tier decision in this appeal. It seems that there was a complicated procedural history including an application for Judicial Review and as a result of a Consent Order made on 06 June 2014 the applications were reconsidered. The appellants in this appeal were refused on broadly the same grounds as before but the Secretary of State now recognised that their oldest daughter met the private life requirements of the immigration rules. As a result her representative withdrew her appeal, which no longer forms part of the linked appeals before the Upper Tribunal. The matter was complicated by the fact that the appellants lodged further appeals against the fresh decisions made in October 2014, which are currently pending before the First-tier Tribunal.

Conclusions

8. We find that the grounds as argued have no merit and amount to little more than disagreements with the First-tier Tribunal decision. While there was a delay in promulgating the decision Mr Chikwe was unable to say how any minor errors of fact might have made a material difference to the overall decision. The grounds of appeal relating to bias and speculation were vague and pointed to no material error that was capable of affecting the decision. While the judge used rather strong language in places his overall findings about the weight to be placed on the immigration history of the appellants and the reasonableness of the family returning to Nigeria as a single unit are sustainable on the facts of this particular case. The judge considered the best interests of the children and gave reasons why

he considered it would be reasonable to expect them to return to Nigeria as a family. We see nothing in Mr Chikwe's skeleton argument that would have made any material difference to the outcome of the appeal even if the judge overlooked it. It is clear from paragraph 36 of the decision that the judge properly directed himself to the five stage approach in *Razgar*. We find that Mr Chikwe's criticisms amounted to little more than a disagreement with the conclusions that the judge reached, which were open to him on the evidence that was before him at the time.

9. Following the Court of Appeal decision in *Singh* we conclude that there was no error of law in relation to the judge's assessment of the post 09 July 2012 immigration rules. Although the application was made before 09 July 2012 the Secretary of State's decision in this case post-dates the narrow window now identified by the Court of Appeal that might still give rise to error. Decisions made after the Statement of Changes to the immigration rules HC565 was introduced on 06 September 2012 can be made with reference to Appendix FM and paragraph 276ADE even if the application was made prior to 09 July 2012.
10. Although we find nothing in the grounds of appeal that disclose an error of law we conclude that the developments since the last hearing are capable of giving rise to an error on the face of the record. Of course this is no fault of the judge who heard the case because he was unaware of the fact that the Secretary of State subsequently decided to grant the oldest daughter leave to remain in the UK. However, this is a factor that may have been capable of affecting his decision in view of the findings he made in paragraph 37 where he infers that it would have been a serious matter if some members of the family were returned but not others. It is for this reason alone that we find that the decision involves the making of an error of law.
11. The decision of the First-tier Tribunal is set aside and will be remade by the same panel at a resumed hearing on Wednesday 05 August 2015.

DIRECTIONS

12. The resumed appeal will be heard by the Upper Tribunal at Field House on **Wednesday 05 August 2015**.
13. The three linked appeals currently before the First-tier Tribunal (IA/45172/2014, IA/45179/2014 and IA/45197/2014) will be linked to this appeal and dealt with by the Upper Tribunal (sitting as the First-tier Tribunal) on the same day.
14. The Secretary of State is to prepare a brief chronology of events explaining the course of events that led to the further decisions being made in October 2014 to be served by **Wednesday 26 July 2015** at the latest.

15. Although many of the facts relating to the appellants' immigration history and life in the UK do not appear to be in any serious dispute it may be that the Tribunal will have to make findings in relation to some factual matters such as the exact length of time the appellants have lived in the UK, how much of that time their stay has been unlawful, the nature of their family circumstances and the effect of removal on the rest of the family if the oldest daughter remains in the UK. The appellants should prepare fresh witness statements in relation to those matters if they are not already dealt with in the existing statements.
16. The main focus of the hearing will be to determine how the change in circumstances following the grant of leave to remain to the oldest daughter might affect the appellants in this appeal in relation to the immigration rules or in relation to an Article 8 assessment outside the rules.
17. The parties must serve any further documents relied upon by **Wednesday 26 July 2015** at the latest.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law
We set aside the decision and will remake the decision at a resumed hearing

Signed 
Upper Tribunal Judge Canavan

Date 02 June 2015