IAC-BH-PMP-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/25308/2014
IA/25309/2014
IA/25313/2014
IA/25316/2014
IA/25318/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke	**Determination Promulgated**
On 9th March 2015	**On 28th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

OSAHAN CHRISTOPHER IGBINOGHENE	First Appellant
TOJU MORIAMO IGBINOGHENE	Second Appellant
IKPONMWOSA TESTIMONY IFE IGBINOGHENE	Third Appellant
TRACEY OSAYUWAMEN IGBINOGHENE	Fourth Appellant
SAMUEL EWAEN IGBINOGHENE	Fifth Appellant

(ANONYMITY DIRECTION NOT MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr H Pratt, Solicitor of WTB Solicitors
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. Before the Upper Tribunal the Secretary of State becomes the appellant. However for the sake of consistency and to avoid confusion I shall continue to refer to the parties as they were before the First-tier Tribunal.

2. On 15th December 2014 Judge of the First-tier Tribunal Landes gave permission to the appellants to appeal against the decision of Judge of the First-tier Tribunal Holt in which she allowed the appeals against the decision of the respondent taken on 6th May 2014 to refuse leave to remain on human rights grounds applying the provisions of Appendix FM and paragraph 276ADE of the Immigration Rules.

3. The grounds of application by the respondent argue that the judge materially misdirected herself in law by failing to take into account that, although the best interests of the child appellants were a primary consideration they were not the only consideration as made clear in *ZH (Tanzania)* [2011] UKSC 4. By reference to *Zoumbas* [2013] UKSC 74 the respondent argued that the judge should have found that it was firmly within the best interests of the children that they should remain with their family unit. Further, it is contended that the judge failed to have regard to the public interest involved.

Error on a Point of Law

4. At the hearing before me and after I had heard submissions from both representatives, I concluded that the decision of Judge Holt contained a material error on a point of law and now give my reasons for that conclusion.

5. Mr Harrison confirmed that the respondent relied upon the grounds. He emphasised that the judge appeared to have made the best interests of the third and fourth appellants, who were under the age of 18, the primary consideration without having regard to the public interest in maintaining legitimate immigration control. In particular he emphasised that the judge had failed to balance the interests of the children against the appalling immigration history of the first and second appellants who had been working illegally in the United Kingdom without apparently complying with requirements for tax and national insurance in the child-minding business they had established.

6. With reference to paragraph 15 of the decision Mr Harrison pointed out that the judge had found that the circumstances of the first and second appellants were such that they could return to Lagos in Nigeria without significant difficulty with the assistance of family friends. Further, he referred me to the decision of *EV (Philippines)* [2014] EWCA Civ 874 (quoted in the grounds) which made it clear that desirability of being educated at public expense in the United Kingdom would not outweigh the benefit to children of remaining with their parents.

7. At the commencement of his submissions Mr Pratt indicated that, if an error was found, then there would be additional evidence to consider as at the date of any future hearing and, accordingly, the matter should be remitted to the First-tier Tribunal. However, he then contended that the decision did not show a material error. He argued that the judge had balanced the points in favour and against removal fairly. He also argued that the judge was not wrong simply to refer to case law in general without quoting specific decisions in paragraph 17. In particular, although the Tribunal decision in *Azmi-Moayed and Others* [2013] UKUT 00197 (IAC) had not been referred to in relation to the length of residence of the third and fourth

appellants and their educational ties, it had been in the appellants' skeleton argument before the judge.

Conclusions

8. The judge's reasons for allowing the appeal on the basis of an infringement of the human rights of the third and fourth appellants are set out in paragraph 17. Although the judge correctly states that each of those appellants had been in the United Kingdom for more than seven years, there is no examination of the principle that the children's best interests would normally be to remain with their parents. Further, no reasons are given for rejecting as relevant the first and second appellants' appalling immigration history which, as the judge concluded, involved "deliberate flouting of immigration law".

9. The decision also fails to give specific consideration to the public interest in maintaining legitimate immigration control. At paragraph 18 the judge makes reference to Section 117 of the Nationality, Immigration and Asylum Act 2014 suggesting that 117B(6)(c) enhances the claims of the first and second appellants because of their parental relationship with the third and fourth appellants, but does not take into consideration that little weight should be given to private life established when parties are in the United Kingdom unlawfully and where that person's immigration status is precarious. Nor does the judge examine the issue of whether or not it would be reasonable to expect the child appellants to leave the United Kingdom.

10. On the basis of the preceding conclusions the decision shows errors on points of law such that it should be re-made.

11. Anonymity was not requested in this case before the Upper Tribunal nor was an anonymity direction made before the First-tier Tribunal. I do not consider that such a direction is appropriate in all the circumstances.

DIRECTIONS

1. The decision of the First-tier Tribunal shows errors on points of law such that it should be re-made afresh on human rights grounds.

2. Having regard to the need for oral evidence to be considered when the decision is re-made and the provisions of paragraph 7.2(b) of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal dated 25th September 2012, it is appropriate that this matter should be heard again by the First-tier Tribunal sitting at Manchester.

3. The appeal should not be heard by Judge of the First-tier Tribunal Holt.

4. No interpreter will be required.

5. The date for the hearing will be set by the Resident Judge for Manchester.

Signed Date

Deputy Upper Tribunal Judge Garratt