



**Upper Tribunal
Immigration and Asylum Chamber**

**Appeal Number IA/31841/2014
IA/31845/2014
IA/31846/2014
and IA/31843/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd April 2015**

**Decision and Reasons Promulgated
On 19th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**A A D-M
O E J U O O
A C E T B O
T N S O**

(ANONYMITY DIRECTIONS MADE)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Doyle, legal representative, M & K Solicitors)

For the Respondent: Mr S Walker (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellants are nationals of Nigeria. The immigration history of the First Appellant is set out in the decision of First-tier Tribunal Judge Camp of the 8th of December 2014, the facts are largely not in dispute and I do not repeat the contents of the decision here. The issue is the

legal consequences of the position that the Appellants are in and that turns on the findings made in relation to the Second Appellant and the conclusions drawn from them.

2. Judge Camp found that the First Appellant was not credible on a number of points going on to find in paragraph 15 that she had remained in the UK without leave to obtain the benefits of the educational system and other state provision. The Third and Fourth Appellants could not succeed under the Immigration Rules but having found that the Second Appellant succeeded the other appeals were allowed under Article 8.
3. In respect of the Second Appellant the Judge's findings are set out at paragraphs 18 and 19 which read as follows:
 - “18. The Respondent state, in the refusal letter, that there is no evidence that the minor appellants have developed ties outside the family unit in the United Kingdom. The appellants have produced school reports relating to the second appellant and photographs. She engages in various sporting activities, including participation in a rugby tag team, and is a member of sports clubs. There are also reports relating to the third appellant. The family attend church. It would be remarkable if they had not formed ties outside the family. I have noted the letter (p.12 of the appellant's bundle) from the Second Appellant in which she names various friends, as does the third appellant, in his letter at page 13.
 19. I do not, for these reasons, consider that it is reasonable to expect the second appellant to leave the UK.”
4. The Secretary of State seeks to challenge that finding for the reasons given in the grounds of application to the First-tier Tribunal of the 16th of December 2014. In summary it is contended that the assessment of reasonableness was superficial, the appellants had no future right to education or healthcare and as it was in the second appellant's best interests to remain with her family it would be reasonable for her to return to Nigeria, the difference in standards in education and healthcare did not demonstrate unreasonableness. So far as the other appellants were concerned the first appellant had no stand alone right and the public interest required to removal of all the appellants.
5. Permission to appeal was granted by First-tier Tribunal Judge Holmes on the 27th of January 2015. He did so on the basis that it was arguable that the Judge's starting point should have been from the position of the First Appellant and it appeared that the Judge had not applied the guidance in EV (Philippines) [2014] EWCA Civ 874. It was arguable that it was in the children's interests to be brought up by their mother and that they could be removed to Nigeria in safety.
6. At the hearing in the Upper Tribunal the parties made submissions in line with their respective positions. These are set out in the Record of Proceedings and referred to where relevant below.
7. The findings made against the First Appellant, and which are unappealed, are damning. She does not have a good immigration history and was found to have remained in the UK in order to receive benefits (in the wider sense of the term) for herself and her children to which none of them were entitled. It is also clear that they have no entitlement or legitimate expectation to continue to receive them.

8. There is no suggestion that the any members of the family are in a situation which is in any way unusual or out of the ordinary. There is no evidence any special educational needs or health problems or that any of the attachments that have been formed are of a particularly strong or durable nature. In any event, a private life formed when an individual is in the UK illegally or precariously attracts little weight and there is no reason why children should be in a different position from an adult in that regard. Also children move schools regularly, most schools in the UK experience a turnover of pupils moving in and leaving, the effect of leaving a school will be similar whether the child so going from one end of the UK to the other or abroad.

9. In EV (Philippines) Clarke LJ, having reviewed the legal background, made the following observations:

“32 There is a danger in this field of moving from looseness of terms to semantics. At the same time there could be said to be a tension between (a) treating the best interests of the child as a *primary consideration* which could be outweighed by others provided that no other consideration was treated as inherently more significant; and (b) treating the child's best interests as a consideration which *must rank higher* than any other which could nevertheless be outweighed by others. It is material, however, to note that Lord Kerr, as he made clear, was dealing with a case of children who were British citizens and where there were very powerful other factors – see [41] below -in favour of not removing them (*"the best interests of the child clearly favour a certain course"/ "the outcome of cases such as the present"*). He also agreed with the judgment of Lady Hale. In those circumstance we should, in my judgment, be guided by the formulation which she adopted.

33. More important for present purposes is to know how the tribunal should approach the proportionality exercise if it has determined that the best interests of the child or children are that they should continue with their education in England. Whether or not it is in the interests of a child to continue his or her education in England may depend on what assumptions one makes as to what happens to the parents. There can be cases where it is in the child's best interests to remain in education in the UK, even though one or both parents did not remain here. In the present case, however, I take the FTT's finding to be that it was in the best interests of the children to continue their education in England with both parents living here. That assumes that both parents are here. But the best interests of the child are to be determined by reference to the child alone without reference to the immigration history or status of either parent.

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.

37. In the balance on the other side there falls to be taken into account the strong weight to be given to the need to maintain immigration control in pursuit of the economic well-being of the country and the fact that, *ex hypothesi*, the applicants have no entitlement to remain. The immigration history of the parents may also be relevant e.g. if they are overstayers, or have acted deceitfully.”

10. At paragraphs 58 to 61 he said this:

“58 In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?

59. On the facts of ZH it was not reasonable to expect the children to follow their mother to Tanzania, not least because the family would be separated and the children would be deprived of the right to grow up in the country of which they were citizens.

60. That is a long way from the facts of our case. In our case none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. If the parents are removed, then it is entirely reasonable to expect the children to go with them. As the immigration judge found it is obviously in their best interests to remain with their parents. Although it is, of course a question of fact for the tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world.

61. In fact the immigration judge weighed the best interests of the children as a primary consideration, and set against it the economic well-being of the country. As Maurice Kay LJ pointed out in *AE (Algeria) v Secretary of State for the Home Department* [2014] EWCA Civ 653 at [9] in conducting that exercise it would have been appropriate to consider the cost to the public purse in providing education to these children. In fact that was not something that the immigration judge explicitly considered. If anything, therefore, the immigration judge adopted an approach too favourable to the appellant.”

11. The fact that a child may have been in the UK for 7 years or more would imply that they will have been educated and made friends, they may have attended church and sports clubs and may well be making progress. A child's life which indicates that normal progression and contacts is not sufficient to make removal unreasonable. The addition of the reasonableness consideration has to import more into the equation. Equally the fact that the child will experience the need to make adjustments will not be sufficient nor will the loss of future educational opportunities.

12. In this appeal the fact is that the Appellants have remained in the UK illegally with the adverse findings made against the First Appellant. There is nothing unusual in the ties that the Second Appellant has established in the UK and none of those could be said to be sufficient to

found an argument that her removal was unreasonable. If they were then any child who had managed to remain in the UK for that length of time would inevitably succeed. I am satisfied that is not how the rule is to be read.

13. In this case I find that Judge Camp effectively treated the best interests of the Second Appellant as determinative of the appeal as a whole even though there was nothing that was out of the ordinary about her situation and without having regard to the countervailing factors. It was an error on his part to find that taking the case a whole it was not reasonable to expect her to leave when she had no entitlement to be in the UK, was not at a critical stage in her education and her mother's immigration history was an aggravating feature. Accordingly I set aside the decision of Judge Camp.
14. The parties made submissions with regard to the remaking of the decision on the basis of the facts as they appear in the decision of Judge Camp. One observation made on behalf of the Appellants and again in relation to the Second Appellant is that she will, by the end of this year, have lived in the UK for over 10 years and may then be entitled to apply for citizenship. I am not in a position to speculate about that, by then they may have been removed. In any event that is a matter for the Secretary of State who may take into account matters such as the overall history when considering such an application. Until that time arrives it is not a relevant consideration in this appeal.
15. The Appellants' circumstances are set out in the decision of the First-tier Tribunal and referred to above. The fact that adverse findings were made against the First Appellant and it is her abuse of the system that has led to this situation is a highly relevant factor in assessing the situation. I appreciate that the Second Appellant and her brother have only known the UK and would prefer to live here rather than relocate and that is unsurprising.
16. Given the relative strengths of the different education and health care systems I would be prepared to accept that it is in the Second Appellant's best interests to remain in the UK. I find that is not determinative of the situation and in the absence of unusual factors that would take her situation out of the ordinary there is nothing about her circumstances as they stand now that would make her removal unreasonable. This is reinforced by the conduct of the First Appellant in her cavalier approach to the immigration rules and her own status.
17. To put the question another way, what is unreasonable about expecting a national of a different country who is in the UK illegally to go and live in the country of which they are nationals where they can live legally? It is not the role of the UK to educate or treat foreign nationals in the UK anymore than Nigeria would be expected to provide healthcare and education to non-Nigerians living there.
18. In the context of Article 8 the family would be removed together to the country of which they are all nationals. There will be a period of adjustment just as this for children moving at any age to a new area wherever that may be. The Appellants will have each other and their mother spent much of her life in Nigeria and can provide the children with the guidance and support that they would need. The evidence does not show that it is unreasonable to expect the Second Appellant to leave the UK or that the removal of the Appellants as a family unit would be disproportionate having regard to the immigration history and the need to protect the economic well-being of the UK.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and I set aside the decision.

I re-make the decision in the appeal dismissing the appeal of the Appellants.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated:

Fee Award

In dismissing this appeal I make no fee award.