



IAC-AH-VP-V1

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

Appeal Numbers: IA/31802/2014
IA/31813/2014
IA/31818/2014
IA/31823/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15 December 2015**

**Decision & Reasons Promulgated
On 6 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

(1) AO (NIGERIA)
(2) OT (NIGERIA)
(3) MO (NIGERIA)
(4) VO (NIGERIA)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Solomon Tampuri, Solicitor, Tamsons Legal Services
For the Respondent: Mr L Tarlow, Specialist Appeals Team

DECISION AND REASONS

1. The appellants appeal to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Dineen sitting at Hatton Cross on 6 November 2014) dismissing their

appeals against the decision to remove them as persons subject to administrative removal under Section 10 of the Immigration and Asylum Act 1999, their human rights (Article 8) claims having been refused. The First-tier Tribunal made an anonymity direction in favour of the appellants, and I consider it is appropriate that the appellants continue to be accorded anonymity for these proceedings in the Upper Tribunal.

Relevant Background

2. The appellants are all nationals of Nigeria. The first and second appellants are husband and wife respectively, and the third and fourth appellants are their children. The third appellant, M, was born in the UK on 18 February 2006 and the fourth appellant V was born in the UK on 10 May 2008.
3. Both their parents have adverse immigration histories. Their father, the first appellant, arrived in the United Kingdom on 24 March 2000, and claimed asylum. His asylum claim was refused on 13 February 2004, and his appeal against that decision was dismissed on 19 May 2004. On 23 February 2005 consideration was given to whether their father could qualify for leave to remain under the legacy exercise, and he was found to be ineligible.
4. According to the immigration history set out in the decision of Judge Dineen, which is not challenged by way of appeal, the second appellant said that she entered the United Kingdom (illegally) in 2001 and 2002. She is recorded as having made a claim for asylum on 29 May 2006, but she later withdrew this claim.
5. On 16 September 2013 the first appellant submitted an application on behalf of himself and the remaining appellants for leave to remain. The application was refused without a right of appeal on 23 October 2013. After further correspondence, the respondent agreed to reconsider the application for further leave to remain, and on 22 July 2014 she gave her reasons for refusing, after further consideration, to grant the family leave to remain, and for making directions for their removal.

The Hearing Before, and the Decision of, the First-tier Tribunal

6. At the hearing before Judge Dineen, the appellants were represented by Mr Rahman of Counsel who was instructed by Tamsons Legal Services. The judge received oral evidence from the first and second appellants, who were cross-examined.
7. In his subsequent decision, he set out the appellants' case at paragraphs [9] to [26]. Counsel accepted that none of the appellants could succeed in their own right under Appendix FM of the Rules. He also accepted that none of the appellants other than the third appellant M could potentially succeed under Rule 276ADE. He submitted that M's appeal should be allowed under Rule 276ADE, and that the appeals of the other appellants should be allowed in consequence, on the basis that they should remain with M in the UK. In paragraph [26] of his decision, Judge Dineen noted that Counsel had submitted a manuscript skeleton argument, which incorporated the submissions to which he had referred previously, and which emphasised the length

of time during which the appellants had lived in the UK. Reliance was placed on the decision of the Upper Tribunal in EA [2011] UKUT 315 and Azimi-Moayed and Others [2013] UKUT 00197.

8. As set out at paragraphs [27] to [30] of Judge Dineen's decision, the Presenting Officer said it would be reasonable for M to relocate to Nigeria, as his family had ties to the culture of that country; there was evidence of suitable educational facilities in Nigeria; it was not credible the family had been supported by the church for a long period as they had stated; and the first and second appellants, who had sought to keep their situation "under the radar", were not credible witnesses.
9. The judge set out his findings at paragraph [31] onwards. He found the first and second appellants to be generally not credible witnesses because they had been knowingly in the UK illegally for a significant period and because, in the absence of supporting evidence from any official of their church, he did not find it credible the church had been supporting them since 2004. He also did not accept it would have been possible for them to live, as they stated, on £60 per week and gifts made to them by church members.
10. He found, as was accepted, that the first and second appellants failed under the partner and parent routes of Appendix FM, and also that the third and fourth appellants failed under the child route of Appendix FM. It was also clear, as was accepted, that all except M failed under the provisions of Rule 276ADE. Whilst M satisfied the provision of that Rule in relation to his length of stay in the UK, it was also necessary for him to satisfy the test that it would not be reasonable to expect him to leave the UK. The judge continued:
 - "37. While [M] satisfies the provision of that Rule in relation to his length of stay in the UK, it is also necessary for him to satisfy the test that it would not be reasonable to expect him to leave the UK.
 38. I approach this issue on the basis that the test is whether it would be reasonable from M's standpoint for him to leave the UK.
 39. The question has to be resolved as a balancing exercise, and it is necessary to take into account Section 55 of the Borders, Citizenship and Immigration Act 2009 which requires that the Secretary of State's functions in relation to immigration are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom. I take that into account.
 40. I take account as stated by the Upper Tribunal in paragraph 15 of the decision in Azimi-Moayed, that it is not the case that the best interests principle means it is automatically in the interests of any child to be permitted to remain in the UK irrespective of other circumstances.
 41. I approach the balancing exercise on the basis that the criticisms of the conduct of the children's parents are to be disregarded.
 42. The starting point is that M's best interests would be served by living with his parents.
 43. I then consider whether those best interests would be outweighed by other considerations, if his parents were in Nigeria.

44. The above approach is, as I find, consistent with the requirements of the decision in E-A referred to above.
45. I take into account the following matters:-
- (i) M has spent his whole life in the UK.
 - (ii) This has included his school life.
 - (iii) However, he is at present only at the primary stage of his education. There is sparse information about how he is progressing at school. While the first appellant states that he is doing very well, there is nothing of substance provided from the school, or other sources such as, for example, sports clubs, to show exceptional performance.
 - (iv) It is generally thought that the seven years from the age of 4 are vital in the development of a child's private life, as expressed in the appeal of Azimi-Moayed, referred to above. Michael is two years short of that period.
 - (v) I am satisfied that M is still young enough to be flexible in his ability to adapt to changes in his family circumstances. Many children have to move with their family to different places around the world, and I am satisfied that there is no reason to suggest that M is less able than any other child to adapt to doing so together with his family.
 - (vi) I am not satisfied that the schools in Nigeria would only operate through the medium of the Yoruba language. No evidence as to the limitations of the Nigerian educational system was adduced, and I note that the observation of the Upper Tribunal at paragraph 11 in the appeal of E-A that there are English speaking schools in Nigeria which the children in that case would attend.
 - (vii) In any event, I am satisfied that, with his family background and his understanding of Yoruba, M could if necessary learn to read, speak and write in that language.
 - (viii) I am not satisfied that M has developed a private life in the culture and traditions of the UK which would make it unreasonable for him to go to Nigeria with his family. In particular, considerations such as like or dislike of any particular foods are, as I find, not of significance.
 - (ix) I take into account that, by the experience of living in the UK, M has acquired the useful facility of the English language, and has had a good educational start at his primary school. These things would stand him in good stead in Nigeria.
 - (x) I also take into account that many children of M's age living in Nigeria do so satisfactorily.
 - (xi) The first and second appellant have the advantages of a substantial period of residence in the UK which would be advantageous in equipping them for making a living and supporting their family in Nigeria.
46. In all the above circumstances, I find that M's claim under paragraph 276ADE does not succeed, because it would be reasonable to expect him to leave the UK.
47. Therefore no broader Article 8 issues arise in relation to the family.

48. I make an anonymity direction in order to avoid what I consider to be the remote possibility of any person in Nigeria having any adverse interest in any of the appellants."

The Initial Refusal of Permission to Appeal

11. The appellants applied for permission to appeal, on the ground the judge had failed to give adequate reasons why the appellants' case did not raise broader Article 8 issues and had failed to follow the jurisprudence in the judgment of **Razgar** and by so doing had erred in law.
12. Permission to appeal was refused by First-tier Tribunal Judge Chambers on 29 May 2015. The judge had correctly given reasons deciding the appeal failed under the Immigration Rules in paragraphs [31] to [46]. The judge had reached a conclusion expressed in paragraph [47] after considering the circumstances of each of the appellants and their combined arrangements as a family unit including the best interest of the child members:

"In such circumstances, absent of finding there was something exceptional necessitating such an exercise, it was not incumbent on the judge as the grounds suggest to carry another assessment of private life arrangements under Strasbourg jurisprudence."

The Eventual Grant of Permission

13. On 3 September 2015 Upper Tribunal Judge Allen granted permission to appeal for the following reasons:
- "It was found that the judge did not give adequate consideration to the Article 8 rights of the family members other than the third appellant whose potential claim under the Immigration Rules was considered in detail. Arguably their appeals merited more detailed consideration than the very brief statement at paragraph 47 of the determination that in effect their appeals could not succeed because the third appellant's appeal did not succeed."

The Rule 24 Response

14. On 18 September 2015 Tony Melvin of the Specialist Appeals Team settled a Rule 24 response on behalf of the Secretary of State, opposing the appeal. He submitted the appeal before Judge Dineen was put on the basis that none of the appellants bar M could come within Rule 276ADE(1)(vi) and as such the other family members were parasitic on his appeal. While it was accepted the judge had not considered all the individual family members with an in depth Article 8 assessment, for an Article 8 consideration to take place it was necessary to show compelling circumstances of which there appeared to be none: see **Singh** at paragraph [60] and **Nagre** at paragraph [30].

The Hearing in the Upper Tribunal

15. At the hearing before me to determine whether an error of law was made out, Mr Tampuri developed the arguments raised in the renewed application for permission

to appeal, and Mr Tarlow adhered to the Rule 24 response which had been settled by his colleague.

Discussion

16. In conceding that the parents did not qualify for leave to remain on private life grounds under Rule 276ADE, Counsel was conceding that there would not be very significant obstacles to their integration into the country to which they would have to go if required to leave the UK.
17. Although the first appellant's evidence was that he feared his life would be at risk on return to Nigeria, as the judge noted at paragraph [19] of his decision, this was not a matter upon which Counsel invited the judge to place any weight.
18. The second appellant's evidence was that she had come to the UK under distressing circumstances, having been a victim of trafficking. The judge noted this evidence at paragraph [20]. But again, Counsel did not invite the judge to place any weight on this evidence as presenting a significant obstacle to the second appellant's ability to reintegrate into Nigeria after a lengthy absence from the country. In his manuscript skeleton argument, Counsel said that the second appellant had her mother in Nigeria, who lived with her own sister, (presumably the second appellant's aunt). Counsel added that the mother would not be able to provide the family with support should they have to return. But he did not submit that, as a result of this asserted lack of support from the mother, the first and second appellant would not be able to maintain and accommodate themselves and their children adequately in Nigeria.
19. In paragraph 45(xi) the judge made a finding of fact which has not been challenged by way of appeal. This was that the first and second appellants had had the advantage of a substantial period of residence in the UK which would be advantageous in equipping them for making a living and supporting their family in Nigeria.
20. Given this particular finding of fact, there was nothing more to be said in respect of the first and second appellants' Article 8 claim outside the Rules. Their respective lengths of residence in the United Kingdom did not avail them in circumstances where:
 - (a) they did not qualify on long residence grounds under any sub-paragraph of Rule 276ADE;
 - (b) they had never had lawful leave to enter or remain in the United Kingdom; and
 - (c) they were not financially independent.
21. The fact that they spoke English, and had relatives in the UK, and had close ties with a church whose congregation consisted of some 80% or 90% of Nigerian people did not disclose a viable Article 8 claim outside the Rules. The threshold for the engagement of private life rights is relatively low, and so it is undoubtedly true that questions 1 and 2 of the **Razgar** test fell to be answered in favour of the first and second appellants with regard to the private life which they had established

unlawfully in the United Kingdom. However, both by reference to domestic and Strasbourg jurisprudence, and also by reference to Section 117B of the 2002 Act, there could only be one answer to the question of whether their removal was proportionate, once it had been determined that it was reasonable to expect child M to go with his parents and younger sibling to Nigeria.

22. In short, as submitted in the Rule 24 response, there were no compelling circumstances which could possibly render the removal of the family a disproportionate outcome.
23. As for child V, all the reasons as to why it was reasonable for child M to return to Nigeria applied with at least equal force to her, as was obvious and did not need to be spelled out.
24. In conclusion, there was no error of law in the judge's succinct statement at paragraph [47] that there were no broader Article 8 issues arising in relation to other members of the family unit. It was a classic piggy backing claim, and the fate of the first, second and fourth appellants hung entirely on the outcome of the third appellant's appeal.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and the decision stands. This appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Monson