



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

Appeal Numbers: IA408062014
IA408162014
IA408222014
IA407992014

THE IMMIGRATION ACTS

**Heard at Manchester
On 13th May 2016**

**Decision & Reasons Promulgated
On 25 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**EOP
BOP
SOP
YOP**

(ANONYMITY DIRECTION MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellants

Respondent

Representation:

For the Appellants: No legal representation
For the Respondent: Mr A McVeety

DECISION AND REASONS

Introduction

1. The Appellants appeal against a decision of Judge Lever of the First-tier Tribunal (the FtT) promulgated on 5th August 2015.
2. The Appellants are all Nigerian citizens, the first and fourth Appellants are married and are the parents of the second and third Appellants born 17th December 2008 and 19th February 2007 respectively.
3. The Appellants applied for leave to remain in the United Kingdom based upon their family and private life. The applications were refused on 13th October 2014.
4. The Appellants' appeals were heard together by the FtT on 6th July 2015 and dismissed.
5. The Appellants applied for permission to appeal to the Upper Tribunal relying upon five grounds which are summarised below.

Ground 1

6. The FtT failed to engage with the Respondent's failure to apply her own policy in relation to children with continuous residence in the United Kingdom of more than seven years.

Ground 2

7. The FtT erred in finding the adult Appellants not credible as when they gave evidence, they were not cross-examined by the Respondent's representative. The FtT therefore acted unfairly.

Ground 3

8. The FtT concluded that 'a false picture' had been presented to the expert which undermined the usefulness of that report. As the FtT had erred in making adverse credibility findings, the FtT also erred in its approach to the expert report.

Ground 4

9. In relation to Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention) and section 55 of the Borders, Citizenship and Immigration Act 2009, the FtT erred by not having regard to the actual terms of section 55, which are to safeguard and promote the welfare of children.

Ground 5

10. The FtT erred in finding that the standard of proof when considering Article 8 was the balance of probabilities, rather than the lower standard.

11. Permission to appeal was granted by Judge Osborne of the FtT and I set out below in part, the grant of permission;

“Contrary to what is stated in the grounds and despite the fact that it was specifically raised in the skeleton argument, the judge dealt appropriately with the best interests of the children. The judge was not obliged to deal with each and every issue raised in the skeleton argument particularly in relation to a Home Office policy which has been withdrawn. However, it is at least arguable that the judge did not specifically provide the Appellants with an opportunity to respond to specific matters which became the subject of his decision even though the Respondent chose not to cross-examine the Appellants. It is at least arguable that the Appellants/witnesses were deprived of appropriate opportunities to clarify points the judge wished to raise. At least to that extent it is arguable that the Appellants were denied a fair hearing.”

12. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008, contending in summary that the FtT directed itself appropriately and that it was open to the FtT to find a lack of credibility in certain aspects of the Appellants’ accounts.
13. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

14. There was no attendance by or on behalf of the Appellants. Their representatives had submitted a fax dated 4th May 2016, referring to the hearing date of 13th May 2016, advising the Tribunal that they were no longer representing the Appellants.
15. I considered rule 38 of The Tribunal Procedure (Upper Tribunal) Rules 2008 which states that if a party fails to attend a hearing, the Tribunal may proceed with the hearing if satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing, and it is in the interests of justice to proceed with the hearing.
16. I was satisfied that not only had the Appellants’ representatives been notified of the hearing by a notice dated 7th April 2016, but the Appellants had also received the same notification giving the time, date and venue of the hearing.
17. There was no application for an adjournment, and as I was satisfied that proper notice of the hearing had been given, and that the decision appealed against was dated 13th October 2014, I decided that it was in the interests of justice to proceed with the hearing in the absence of the Appellants.
18. I heard oral submissions from Mr McVeety who relied upon the rule 24 response in submitting that the FtT had not erred in law. I was asked to find that it was open to the FtT to make adverse credibility findings, having considered the evidence of the adult Appellants.

19. I was asked to find that the FtT hearing was not unfair, and the decision should stand.
20. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

Ground 1

21. I find no merit in the suggestion that the FtT failed to engage with the Respondent's failure to apply her own policy. If the reference to a policy is a reference to DP5/96, I note that policy was withdrawn by the Respondent well before the Appellants applied for leave to remain. The fact that this policy was withdrawn was acknowledged in the skeleton argument prepared on behalf of the Appellants, and the FtT was requested to consider paragraph 276ADE(1)(iv) which applied to children who had lived continuously in the United Kingdom for at least seven years at the date of application. The FtT considered paragraph 276ADE(1)(iv) and Article 8 outside the Immigration Rules.

Ground 2

22. The FtT did not err in making adverse credibility findings. The FtT was entitled to make adverse credibility findings in relation to the adult Appellants who adopted their witness statements at the hearing.
23. It is the responsibility of the FtT to assess credibility and make findings, and simply because the Respondent's representative did not cross-examine the adult Appellants does not mean that the FtT must accept that evidence as being credible.
24. In my view the FtT did not act unfairly. The findings contained in paragraph 24 were open to the FtT to make on the evidence. The central issue relates to whether it is reasonable for the minor Appellants to leave the United Kingdom and reside in Nigeria. The finding made by the FtT that it was not accepted that the first Appellant ever intended to return to Nigeria, and the finding that it was not accepted that the fourth Appellant never intended to join the first Appellant in the United Kingdom, are not in fact material or significant findings. They do not go to the core of the appeals, which is whether it is reasonable for the minor Appellants to live in Nigeria.
25. The FtT was entitled to note that the applications for leave to remain in the United Kingdom were only made after the arrest of the first Appellant in October 2013, and prior to that both adult Appellants had been living in the United Kingdom without leave.
26. The FtT was entitled to find, on the evidence presented, that the first Appellant's claim that he and his mother were destitute in Nigeria because of greedy relatives, was inconsistent with the evidence in the first Appellant's visa application, that his studies in the United Kingdom had been funded by his uncle in Nigeria.

27. The Appellants relied upon the contents of their witness statements and in my view the FtT was entitled to analyse that evidence and make findings upon it, and was not under an obligation to afford the Appellants an opportunity to comment upon every proposed adverse finding. This ground does not disclose an error of law.

Ground 3

28. I find that this is linked with the second ground. As I find that the FtT did not err in making adverse credibility findings, I find that the FtT did not err in its approach to the expert report.
29. The FtT considered the expert social worker report in some detail as is apparent from paragraphs 31-35 of the FtT decision. In my view, the FtT carried out a thorough analysis of the report, and gave cogent reasons for not accepting the report's conclusions.

Ground 4

30. I find no merit in this ground. It is clear that the FtT was aware of the provisions of section 55 of the Borders, Citizenship and Immigration Act 2009. As the FtT made clear in paragraph 27, the issue in relation to the minor Appellants was whether or not it would be reasonable to expect them to leave the United Kingdom and reside in Nigeria. The FtT pointed out in paragraph 31 that
- "In reality this case is focused on the position of the children and it is very much with their situation in mind that I have considered the evidence. My examination of the evidence presented includes paying regard to the social worker report that was sent separately and was specifically referred to by Dr Mynott in his submissions."
31. The FtT correctly considered paragraph 276ADE(1)(iv) as to whether it was reasonable to expect the minor Appellants to leave the United Kingdom, and also considered the question of reasonableness in relation to Article 8 outside the Immigration Rules. The FtT demonstrated that this was a primary consideration.

Ground 5

32. This is not a case where the Appellants had claimed asylum or humanitarian protection, nor had they raised Article 3 of the 1950 Convention. When considering Article 8 under the Immigration Rules, the burden of proof is a balance of probabilities, and the FtT correctly stated this to be the case. I do not accept that the FtT erred by applying too high a standard of proof.
33. The grounds display a disagreement with the findings and conclusions reached by the FtT but they do not disclose a material error of law.

Notice of Decision

The making of the decision of the FtT did not involve the making of an error on a point of law such that the decision must be set aside. I do not set aside the decision. The appeal is dismissed.

Anonymity

The FtT made an anonymity direction. I continue that anonymity order pursuant to 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 21st May 2016

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeals are dismissed. There is no fee award.

Signed

Date 21st May 2016

Deputy Upper Tribunal Judge M A Hall