



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

Appeal Numbers: HU/03899/2015
HU/03900/2015
HU/03901/2015
HU/03902/2015

THE IMMIGRATION ACTS

Heard at Field House

On 16 January 2018

**Decision &
Promulgated
On 6 February 2018**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**FAVOUR [H]
ODDY [O]
DIVINE [H]
SANDRA [I]**

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms N Nmamni (Counsel)

For the Respondent: Mr P Nath Home office presenting officer

DECISION AND REASONS

1. This is an appeal by Mr [O], the main appellant in respect of a decision and reasons before First-tier Tribunal (Judge Plumptre) (FTT) promulgated on 2 March 2017 in which she dismissed the appeal on human rights grounds.

2. Grounds of appeal to the Upper Tribunal argued that the FTT failed to attach weight to the fact that the third appellant was a “qualified” child and placed too great weight on the poor history of the parents, in effect blaming the children for their conduct [47]. The assessment as to reasonableness was inadequate [30]. The FTT failed to carry out a proper assessment of risk in respect of the third child as regards FGM [52-64]. Finally it was argued that the FTT was not entitled on the evidence to find that the parents had worked illegally and not paid tax or insurance.
3. Permission was granted on the grounds that the FTT failed to attach significant weight to the length of residence of the qualifying child pursuant to the guidance in **MA (Pakistan) v SSHD [2016] EWCA Civ 705**.

Discussion and conclusions

4. I have listened to the submissions made this morning and I have decided that there was no arguable error of law in the determination. I dismiss the appeal. My reasons are as follows. In a detailed and well-reasoned decision and reasons the FTT set out clear findings and reasons in support of her decision. I am satisfied that there are no arguable grounds in support of the claim that the risk of FGM to the third child was not properly assessed. The decision at paragraphs 52 to 62 fully covers the issue and took into account that there was no evidence to show why the particular child was at risk of FGM, notwithstanding that her mother comes from a background where FGM had been practised.
5. As to the ground that the FTT had in effect blamed the children for the sins of the parents in terms of their poor immigration history, I conclude that this ground has not been made out. The FTT properly considered this issue by looking first at where the best interests of the children lie [31] without reference to the immigration history or the previous convictions of the first appellant in 2012.
6. As to whether it is reasonable to expect the third child (who is a qualifying child by reason of her residence in the UK) to return to Nigeria, this was also an issue that was fully considered by the FTT and in terms of the public interest under Section 117B(6) Nationality Immigration & Asylum Act 2002 (as amended). I am satisfied that the FTT did consider this aspect properly in the context of all the evidence with reference to the statutory criteria. The fact that FTT had not expressed this using the phrase “significant weight” as regards to the length of residence, did not make any material difference to the outcome.
7. The FTT found the best interest of the children lay in remaining with their parents as a family unit. The FTT considered the age, length of residence and education which were all the issues relevant to “reasonableness”. The FTT found no evidence of any exceptional or compelling factors and in the balancing exercise the FTT found that the public interest outweighed any private interests. I am satisfied that the approach taken was entirely consistent with the principles in **MA Pakistan**. Although there has been

criticism of the FTT having a particular focus on education, it is apparent from the bundle of evidence for the hearing before the FTT there was in fact little evidence available in terms of social and cultural ties and the main evidence in relation to the children was in regard to their education.

8. As to the evidence of employment, paying tax and national insurance I accepted that there may have been an factual error in the determination and that there was some evidence to show that the appellant's wife was working and paying tax and NI at the time she was a student in 2013. However, it was clear that there was no further relevant documentary evidence adduced before the FTT and the appeal was determined on the evidence before it. This was confirmed by checking the file and bundles of the evidence before the FTT. Even if that evidence had been available I am not satisfied that the outcome would have been any different.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed

Date 2.2.2018

GA Black
Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 2.2.2018

GA Black
Deputy Upper Tribunal Judge G A Black