



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

Appeal Numbers: HU/07108/2017  
HU/07109/2017  
HU/07111/2017  
HU/07112/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 October 2018**

**Decision & Reasons Promulgated  
On 14 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**MS E M A (FIRST APPELLANT)  
MR D O O (SECOND APPELLANT)  
MR E T O (THIRD APPELLANT)  
MR T O O (FOURTH APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms P Glass, Counsel, instructed by Ineyab Solicitors  
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are a family from Nigeria. The first and second appellants are the parents of the third and fourth appellants, two minor children who were born on 19

December 2006 and 15 December 2011 respectively. The appellants appealed to the First-tier Tribunal against the decision of the respondent dated 5 June 2017 to refuse their human rights application for leave to remain in the United Kingdom on the basis of their family and private lives under Appendix FM and paragraph 276ADE. In a decision promulgated on 31 May 2018, Judge of the First-tier Tribunal R L Walker dismissed the appellants' appeals.

2. The appellants appeal with permission from the First-tier Tribunal on the basis that it was arguable that the judge may have erred in relation to the adequacy of the best interests' assessment of the third appellant who has been here for ten years as a child (First-tier Tribunal Judge Saffer, 29 August 2018).
3. The appellants' grounds are as follows:
  - (1) ground 1: inadequate consideration of the best interests of the children;
  - (2) ground 2: status of the third appellant as a qualifying child, it was submitted that the reasonableness assessment was inadequate. Bearing in mind what was said by Lane J in **MT and ET (children's best interests ex tempore pilot) Nigeria [2018] UKUT 88**, at [34], something more than immigration status is required and that the starting point is that leave should be granted unless there are powerful reasons to the contrary and that the judge did not give significant weight to the fact that the third appellant was a qualifying child.

### **Error of Law Discussion**

4. Ms Glass relied on the grounds of appeal. She submitted that the third appellant is now 12 and at secondary school although she accepted that this was not before the Upper Tribunal in terms of the error of law assessment. She relied on **ZH Tanzania** and submitted that it was clear that the courts have decided that children are not parcels and that great weight should be attached to their best interests and that the sins of the parents should not be taken into consideration when considering the best interests.
5. Ms Glass further submitted that Judge Walker's assessment of the best interests was inadequate and he failed to deal with the specific test. The point is that the children have put down roots. She further submitted that whilst the judge directed himself at [45] to Section 55, this was inadequate. Ms Glass relied on **MA Pakistan [2016] EWCA Civ 709** and particularly at paragraph 57 that any issues of unlawful conduct have no role in the best interests' assessment.
6. Similarly, relying on **Kaur (children's best interests/public interest interface) [2017] UKUT 14** it is vital to have a full and careful assessment of the best interests and these children never lived in Nigeria and the eldest child has lived almost all of his life in the UK. Although Ms Glass acknowledged that Judge Walker had accepted that the children's best interests were to remain in the UK and for their lives not to be disrupted, she submitted that he stopped there and that he had failed to adequately engage with all aspects of the children's best interests.

7. In respect of ground 2, Section 117B is addressed by the judge at [42] of the decision and reasons, however significant weight must be given to the best interests' assessment in the balancing exercise and Ms Glass again drew my attention to **MA Pakistan**. The starting point would be that leave has to be granted and that powerful reasons were not set out. What was set out was the adults' immigration history. Although Ms Glass initially submitted that this immigration history was not relevant, she accepted that it was relevant as part of a wider reasonable assessment although not as part of the best interests assessment. Ms Glass relied on paragraph 15 of the grounds and submitted that the findings at [47], that the overall situation warrants the family returning to Nigeria, were not adequately reasoned.
8. Mr Whitwell submitted that Judge Walker had found that the best interests of the children were to remain in the UK and that at no point did the parents' immigration history factor in that best interests assessment. That is patently the case. At [45] the judge directs himself to the best interests. I bear in mind that the judge went on to consider five factors:
- (1) that the minor appellants would be moving as a family unit;
  - (2) that there was a functioning education system in Nigeria and there was no claim that the children would not be educated or it would not be available to them;
  - (3) that, as set out at [46], in terms of going to Nigeria the minor appellants would not be strangers to Nigeria, the people and customs and culture as the appellants "appear to have existed within the Nigerian diaspora in the UK";
  - (4) the judge made findings in relation to the family being able to attend similar churches or branches of the church on return;
  - (5) the judge made a finding, contrary to the evidence of the first and second appellants whom the judge did not find credible, that the family would have family support in Nigeria [46].
9. Mr Whitwell further submitted that the Upper Tribunal had not been taken to anything that Ms Glass suggested had not been assessed by the judge or not been taken into consideration in the best interests' assessment. Mr Whitwell relied on what was said in **EV (Philippines) and Ors v Secretary of State for the Home Department [2014] EWCA Civ 874** specifically at paragraph 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".

10. Mr Whitwell further emphasised the lack of any information to suggest what it was that the First tier Tribunal had not considered when assessing the children's best interests. It was his submission that it cannot be said that any child over 7 can never leave the UK.
11. It was not disputed that at the time of the hearing the appellant was still in primary education and at this stage of his life there was nothing in the evidence before the Tribunal to suggest that there was anything further in the best interests' assessment over and above his education, his friends, his family and their links to the church, that the judge ought to have addressed.
12. I take into account that it is not disputed, that the judge, at [45] and [46] conducted a best interests' assessment and did in fact reach the conclusion in favour of the appellants, that it would be in the best interests of the children, for their lives not to be disrupted in any way, particularly their education, by a move to Nigeria. The judge did so taking into account all the evidence before him, adopting an appropriately wide focus on the evidence, including the children's schooling and the length of the third appellant's residence (at [16] and [40]) and there was nothing before me to suggest that there was anything the judge failed to take into consideration.
13. It is evident the judge considered all the factors before him in reaching the conclusion that he did that the best interests of the minor appellants would be for their lives not to be disrupted, in particular their education by a move to Nigeria. The judge had in mind the evidence before him, including the documentary evidence. This included witness statements from the adult appellants, a letter from the third appellant's school which indicated that as of Tuesday 8 May 2018 the third appellant was in year six at primary school and was on track to reach the expected level in his SATs test and had secured a place for high school in September 2018 with 100% attendance and that his parents were interested in his education. The judge reflected this in his findings, including at [24] that the third appellant was doing well at school and that the fourth appellant had started primary school the previous year ([40]).
14. There was also a GP record of vaccinations and attendance to his GP for minor matters, together with letters in evidence in support and photographs and medical evidence in relation to the first appellant.
15. The judge also took into consideration that the move would result in some disruption to their lives. It was unclear what further analysis could have been undertaken. No error of law is disclosed in ground 1.
16. In respect of ground 2, the judge noted, at [32], the very poor immigration history and overstaying of the adult appellants. That was the first factor taken into consideration in the reasonableness assessment. Such a finding was available to the First-tier Tribunal.

17. The second factor taken into consideration was the burden to the taxpayer in terms of education and the NHS (it not having been disputed that the first appellant had had access to antiretroviral drugs for over a decade) at [42] in terms of the Section 117B assessment.
18. The third factor in the Tribunal's consideration of whether there were powerful reasons against the grant of leave, was that, at [30], the Judge of the First-tier Tribunal heard the adult appellants and found their account to be evasive and unconvincing and was satisfied that the evidence given was far from simultaneous and "what they consider to be the best to say rather than being based on the truth".
19. Mr Whitwell submitted that these were very powerful reasons outweighing the children's best interests. Mr Whitwell relied on paragraph 76 of the respondent's family migration guidance, version 1.0 dated 22 February 2018 which provides that such strong reasons may arise where for example the child will be returning with the family unit and the parents have deliberately sought to circumvent the immigration control or abuse the immigration process. Although it could well be that a different Tribunal might have reached a different conclusion, the judge's findings were adequately reasoned.
20. I take into account what was said in the Presidential panel in **MT and ET** including in the headnote as follows:

'A very young child, who has not started school or who has only recently done so, will have difficulty in establishing that her Article 8 private and family life has a material element, which lies outside her need to live with her parent or parents, wherever that may be. This position, however, changes over time, with the result that an assessment of best interests must adopt a correspondingly wider focus, examining the child's position in the wider world, of which school will usually be an important part.'
21. The child considered in the case of **MT and ET** was fourteen years old and in that case the Upper Tribunal found that, given the strength of the child's case her parent's conduct in using a false document to obtain employment, for which she had received a community order, did not constitute powerful reasons why leave should not be granted.
22. I accept Mr Whitwell's submission that the child's best interests in **MT and ET** were significantly stronger, including that child had 'embarked on a course of studies leading to the taking of GCSEs' whereas the third appellant in the appeal before me was still at primary school at the time of the hearing before the First-tier Tribunal (as identified by the judge at [24]).
23. In terms of ground 2, the judge was entitled to reach the conclusions he did in terms of reasonableness and it was not a case that it was just the immigration history that the judge took into consideration. The judge considered the wider factors, including the financial elements, the use of the NHS and the education system, together with

what the judge found to be a lack of credibility in evidence from the first and second appellants.

24. The judge properly took into consideration that the best interests of the children were for them to remain in the UK and took into account the place of those children in the wider world, including school.
25. The First-tier Tribunal properly followed the fact-sensitive approach required. The judge properly considered the relevant case law, including, at [47], **MA (Pakistan)**. This is a case where the judge made findings available to him and the strength of the minor appellants' best interests, reflected in those findings, was not at the level considered in **MT and ET**. Equally, as outlined above, there were other considerations over and above the poor immigration history, which the judge properly took into consideration and which amounted to powerful reasons why leave should not be granted. No error of law is disclosed in ground 2.

### **Conclusion**

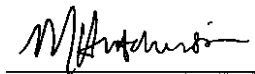
26. The decision of the First-tier Tribunal does not contain an error of law and shall stand.

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

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

Signed

Date: 24 October 2018




Deputy Upper Tribunal Judge Hutchinson

### **TO THE RESPONDENT** **FEE AWARD**

As the appeals are dismissed I make no fee award.

Signed

Date: 24 October 2018



Deputy Upper Tribunal Judge Hutchinson