Upper Tribunal
(Immigration and Asylum Chamber)

Appeals: HU/13260/2016
HU/13273/2016
HU/13276/2016

THE IMMIGRATION ACTS

Heard at Glasgow	**Decisions and Reasons Promulgated**
on 19 October 2018	**on 5 November 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ALABI + 2

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr J Bryce, Advocate, instructed by Drummond Miller, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This decision is to be read with:

   (i) The respondent's decision dated 11 May 2016, refusing the appellants' claims on human rights grounds.

(ii) The appellants' grounds of appeal to the First-tier Tribunal.

(iii) The decision of FtT Judge Buckwell, promulgated on 1 December 2017.

(iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal dated 15 December 2017.

(v) The grant of permission by FtT Judge Pooler, dated 15 May 2018.

(vi) The skeleton argument prepared by Mr Bryce, dated 18 October 2018.

2. The appellants are father, mother and son, all citizens of Nigeria.

3. The argument presented by Mr Bryce was as follows:

(i) It was accepted there was no error of declining to assess the best interests of the child separately from the position of the parents.

(ii) There was error in that the judge at [50] said that he took account of the mental health of the mother, and various health issues regarding the child, but failed entirely to say what he made of them. The issue in respect of both parents was in terms of paragraph 276ADE(1)(vi) of the immigration rules - whether there were very significant obstacles to their integration into their home country. The "section 55 duty" in effect required that question to be asked also about the child. The omission of any reasoning on the reports about the child's development was error on a matter central to the decision.

(iii) The decision should be set aside.

(iv) The decision fell to be remade in the context that since 28 July 2018 the child has been a qualifying child in terms of s.117B of the 2002 Act. A family with a qualifying child was to be granted leave in absence of strong reasons to the contrary. There were none. The parents were here lawfully until 2 September 2015. They had overstayed but never absconded. Applications leading to these proceedings were dated 30 September 2015.

(v) The decision should be remade in the appellants' favour.

4. Mr Govan submitted thus:

(i) The grounds and submissions for the appellant showed disagreement, not error of law.

(ii) The decision might have been more clearly structured, but the findings that the evidence showed no obstacles to integration were sufficiently explained, and served also to cover all considerations relevant to the best interests of the third appellant, and to article 8.

(iii) The appellants had not referred to anything which might have led to a different outcome.

(iv) The decision should stand.

5. Mr Bryce said in reply that the matter was well covered at paragraph 8 of the grounds:

> "The judge failed to provide adequate reasons … outside the rules (and possibly also in relation to rule 276ADE(1)(vi)) [re] the impact on every member of the family of the removal of the child with his parents to Nigeria and in particular whether the combination of the second appellant's medical needs along with the third appellant's developmental needs would represent very significant obstacles to integration or … mean that removal would be disproportionate."

6. Mr Bryce further submitted that the onus was on the SSHD to show powerful reasons to justify removal. However, he accepted my observation that it remained for the appellants to provide the evidence on which reasoning was to proceed.

7. I reserved my decision.

8. The submissions of both parties were succinct; but neither drew attention to the underlying evidence which had been dealt with either inadequately (as the appellant said) or adequately (as the respondent said).

9. The degree of particularity required in dealing with evidence varies according to the circumstances of the case. Judgements cannot be too sweeping; but they do not have to specify and analyse all the evidence line by line. (The appellants' first inventory of productions ran to 103 pages.)

10. The judge said at [50] – [51] that he had considered the evidence about the third appellant, and that it showed no very significant obstacles to his integration into Nigeria, hence no article 8 case within the rules; and went on by [57] to hold that no disproportionate interference with article 8 rights was shown, and the requirements of section 55 had been complied with.

11. The evidence is at items 6 – 10 of the appellant's first inventory of productions in the FtT:

> 'Item 6, dated 5 September 2017, is from a lead speech and language therapist, Aberdeen City. The third appellant has "mild difficulties" and is not being provided with direct therapy.
>
> Item 7, dated 28 June 2017, is a Speech and Language Therapy report from NHS Grampian. The appellant in various respects is "just below expected levels for his age", and "on the whole, in the low normal range".

Items 8 and 9 are earlier reports, in similar terms.

Item 10 is letter fixing 3 appointments in 2016, of no significance.'

12. The judge said he had taken the reports into account. There is no reason to doubt him. Nothing in the reports might conceivably have led to another outcome. Further analysis could not have helped the appellants.

13. Mr Bryce referred in his skeleton argument to the fact that a decision of the Supreme court was pending. That decision is available today, *KO (Nigeria) & others*, [2018] UKSC 53. I see nothing in it which, applied to this case, might lead to the decision of the FtT being set aside for error on a point of law or which might contribute to another result.

14. The decision of the First-tier Tribunal shall stand.

15. No anonymity direction has been requested or made.

24 October 2018
Upper Tribunal Judge Macleman