



IAC-TH-WYL-V1

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

Appeal Numbers: AA/02249/2014
AA/02250/2014
AA/02251/2014
AA/02252/2014
AA/02253/2014
AA/02254/2014
AA/02376/2014

THE IMMIGRATION ACTS

Heard at Field House

On 28 October 2014

**Decision & Reasons
Promulgated**

On 5 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

**MR A O - FIRST APPELLANT
MRS O O - SECOND APPELLANT
MASTER A A O - THIRD APPELLANT
MISS A O O - FOURTH APPELLANT
MASTER A O O - FIFTH APPELLANT
MASTER O I O - SIXTH APPELLANT
MISS A O O O - SEVENTH APPELLANT**

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms G Brown, Counsel

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. An anonymity order has previously been made in these proceedings and I direct that it continues.
2. The appellants are citizens of Nigeria. The first appellant was born on 23 February 1971. The second appellant is his wife and the other appellants their children.
3. They sought international protection which the respondent refused in a decision dated 21 March 2014. Thereafter they appealed and following a hearing at Taylor House on 5 August 2014 Judge of the First-tier Tribunal Aujla dismissed their appeals on asylum grounds, Humanitarian Protection grounds and human rights grounds.
4. The appellants sought permission to appeal and in a decision dated 12 September 2014 Judge of the First-tier Tribunal Ransley set out her reasons for granting such permission. They state:
 - “1. The Appellant seeks permission to appeal, in time, against a decision of the First-tier Tribunal (Judge Aujla) who, in a determination promulgated on 22/08/2014, dismissed the Appellant’s appeal against the 21/03/2014 decision to remove the Appellant and to refuse to vary leave to remain.
 2. Ground (1) submits that the Judge wrongly rejected the evidence of the country expert Ms Olateru-Olagbegi on the erroneous assumption that she lacked credentials when the expert had stated her credentials in her report at page 5; the Judge also failed to give sufficient reasons for not accepting the expert evidence in the report.
 3. Ground (2) submits that the Judge failed to properly assess the appellant’s wife’s oral/written evidence; the Judge also failed to give reasons for rejecting the documentary evidence relied upon by the appellant.
 4. Ground (3) submits that the Judge’s conclusion that the Appellant’s children were made to write their witness statements with a view to embellishing the Appellant’s asylum claim was not one open to the Judge on the evidence.
 5. Ground (4) submits that the Judge failed to take account of relevant factors in assessing the best interests of the Appellant’s children under s55.

6. Ground (5) submits that the Judge erred in his finding, by reference to s117B(5), that the Appellant's immigration status is 'precarious' when the Appellant had student to remain as a student until June 2013.
7. The Grounds have disclosed that there are arguable errors of law in the determination that might have made a material difference to the outcome of the appeal; permission is therefore grant. All Grounds may be argued."

5. The first ground of appeal states:

"Ground one: Wrongful rejection of expert evidence

1. It is submitted that the FtTJ wrongly rejected the expert evidence of Ms Bisi Olateru-Olagbegi [pp13 - 39 of the appellant's bundle]. He stated [paragraph 38];

"I noted that the expert did not make any mention of ever having given evidence as an expert or been recognised by the Tribunal or higher courts as an expert witness".

However, in her report, Ms Olateru-Olagbegi stated [page 5 of her report];

"I have written several expert opinions on cases involving migration rights, human trafficking, forced labour and gender violence including FGM at local and international levels including in the United Kingdom".

In any event, there is no requirement in law for an expert to have previously given oral evidence as an expert or be recognised as an expert, before their report can be accepted; Karanakaran [2000] 3 All ER 449, CA and Mibanga [2005] EWCA Civ 36. If this were the case, it would be impossible for any expert to be accepted.

2. With regard to the FtTJ's contention that Ms Olateru-Olagbegi 'did not even mention her day-to-day profession', it is clear that he failed to engage with the information she provided that she is; (a) the Executive Director of Women's Consortium of Nigeria (WOCON) a non-governmental organisation promoting the rights of women and children and the attainment of equality, development and peace; (b) a Board member representing West Africa Anglo-phone countries of the Women in Law and Development in Africa (WiLDAF), a pan member of the Nigerian Network of CSOs against Child Trafficking, Abuse and Labour

(NACTAL). These is clearly Ms Olateru-Olagbegi's *relevant* 'day-to-day' occupation.

3. In respect of Ms Olateru-Olagbegi's conclusions, her declaration at the foot of her report is particularly material and relevant. She stated that she is aware of the requirements of Part 35 of the Practice Direction for Experts (Civil Procedure Rules) and also of the Protocol for Instruction of Experts to give Evidence in Civil Claims. She also stated that she was aware of the Ikarian Reefer guidelines and had read section 10 of the Practice Directions of the Immigration and Asylum Chambers of the First-tier Tribunal and The Upper Tribunal (10/02/10) and applied them in the preparation of her expert report. It is further submitted that there is no prohibition on an expert expressing their relevant guidance and instruction, as in this case. The case of FS (Treatment of Expert evidence) Somalia [2009] UKAIT 00004 makes it clear that this is not prohibited and that the notwithstanding any such expression by an expert, credibility and any 'ultimate issue' remains a matter for the judge in any given case notwithstanding the expert's opinion.
4. In light of the above, and given the support for the appellants' case contained within the expert report [e.g. see paragraphs 11 and 16 of the appellants' skeleton argument], it is submitted that the FtTJ wrongly rejected the material aspects of the appellants' account and materially misdirected himself in respect of sufficiency of protection and the availability of an internal flight alternative."
6. At the hearing before me Ms Jones amplified not only that ground but also the other four. The note of her submissions are set out in my Record of Proceedings. Likewise the submissions of Mr Kandola in opposing the applications. With reference to the first ground he argued that the findings the judge made in relation to the expert evidence were open to be made. He had pressed Counsel at the hearing in the First-tier Tribunal for assistance but none was available. At the end of the day the judge had considered the appellants' claims at their highest and in so doing the judge had not erred as submitted by the appellants' Counsel.
7. I disagree with Mr Kandola. The ground is deliberately set out above by me as its analysis of the judge's approach and wrongful rejection of the expert evidence is in total accord with my own.
8. It follows therefore that any analysis of the other grounds becomes a redundant exercise as the material error in the judge's approach to the expert evidence is such that the appellant was deprived of a fair hearing.

That being so I find that the determination is such that it must be set aside in its entirety.

9. It is clear therefore that where the decision of the First-tier Tribunal is set aside, the Upper Tribunal has power to remit the appeal to the First-tier Tribunal with directions for reconsideration of the appeal. I take account of the practice statement dated 10 February 2010 at 7.2 which contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the errors have been to deprive the party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal. That nature and extent of the judicial finding necessary in order to enable to the decision in the appeal to be re-made is such that, having regard to the overriding objective, it is appropriate to remit the case to the First-tier Tribunal.
10. This is my view on my own analysis of the totality of the circumstances here. It is appropriate for me to remit this matter to the First-tier Tribunal. The hearing that took place there was a hearing within which the First-tier Judge erred and thereby preventing the appellant from having a fair hearing.
11. Accordingly this appeal is remitted to the First-tier Tribunal for reconsideration of the appeal by a First-tier Judge other than Judge Aujla. None of the findings of fact made at the First-tier Tribunal are preserved and there is to be a fresh hearing when all issues are to be considered de novo.

Anonymity direction is made.

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 4 November 2014.

Deputy Upper Tribunal Judge Appleyard

DIRECTIONS

1. The substantive hearing of this appeal will take place at Taylor House on the first available date.
2. The time estimate is three hours.
3. Any further documentary evidence relied upon by either party is to be filed and served with the Tribunal no later than 4pm five working days prior to the substantive hearing.

Signed

Date 4 November 2014.

Deputy Upper Tribunal Judge Appleyard