



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

Appeal Number: IA/12824/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 3 March 2015**

**Decision &  
Promulgated  
On 5 March 2015**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**PETER ADEDEJI IKUESAN**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss G Record, Counsel, instructed by David Grand  
For the Respondent: Miss J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal brought by the appellant against the decision of First-tier Tribunal Judge Handley promulgated on 17 November 2014. The decision refused the appellant's application for leave to remain outside the Immigration Rules on the basis of his Article 8 rights.

2. The factual matrix is undisputed before me and is that the appellant came to the UK unlawfully in 2007, had remained here unlawfully ever since including working here unlawfully. His partner also came unlawfully and has remained unlawfully ever since. The three children born here since then have never had any leave either.
3. First-tier Tribunal Judge Handley found that there was family life between the members of the family but that could take the case nowhere as the family could all return to Nigeria together. The judge refers to these matters at [23] where he considers whether it was reasonable for the children to return to Nigeria with the parents. At [24] he considered the provisions of Sections 117B and 117C of the Nationality, Immigration and Asylum Act 2002, correctly identifying that little weight could attract to the appellant's private life or that of his family where it was established while they were here illegally.
4. The grounds of appeal as drafted objected to the decision on the basis that it failed to take into account the fact that only the appellant had been issued with removal directions. I could see no merit in this argument whatsoever. As indicated in the previous paragraphs, there is nothing preventing the wife and children returning to Nigeria with the appellant. It is not a case of "family splitting". There is no obligation on the Secretary of State to issue removal directions in order to make it reasonable for the wife and children to return to Nigeria. The first ground of appeal has no merit.
5. Miss Record quite properly focused on the second ground of appeal which argued that the judge failed to carry out any proper assessment of what is in the best interests of the children. It was maintained that where the judge considered the children's situation at paragraph 23 of the decision this was not sufficient. I presume that is what is meant in paragraph 3 of the grounds although it states "Para 23 is an **adequate** assessment of where their best interests lie"; I assume that must be a typographical error.
6. I do not think that this ground of appeal has any merit either. The ages of the appellant's older children as of the hearing before the First-tier Tribunal were 4, 2 and the third child was only a few months old. There was nothing in the evidence before me that identified anything in particular about their circumstances other than that they were born here in the circumstances described above to two Nigerian parents who entered unlawfully and have remained unlawfully ever since. I could not see anything that could possibly have allowed the best interests of the children to be assessed as other than remaining with their parents wherever that might be. That is so whether the wife and children choose to return to Nigeria with the appellant or not. That is merely a family decision and not something for the respondent or this Tribunal to be concerned with.

7. Put simply, there is nothing in this case on the evidence that was before the First-tier Tribunal that could have allowed it to succeed on any basis and that was so even after the best interests of the children assessed and weighed and their highest were taken into account.
8. In any event, I am satisfied that in the context of the evidence that was before this judge, his consideration at [23] that it was reasonable for the children to return with the father even though this would, as he noted, amount to “disruption and inconvenience” was an entirely proper and sustainable approach to the best interests of the children and to the proportionality issues here.
9. At the hearing Miss Record raised a slightly different point as to an improper test being applied, that of insurmountable obstacles. I could not see where in the determination the judge could be said to have applied this test, his wording at [23] being quite clearly that of reasonableness. The final sentence of [23] states that he did not find it “unreasonable to expect them to leave the United Kingdom”. As above, it remains the case that there was nothing here that could show that there is otherwise than a very clear expectation that the appellant and his family should leave the United Kingdom, even after the fullest consideration of any Article 8 issues.
10. I therefore do not find that an error has been shown in the decision of the First-tier Tribunal.

### **Decision**

11. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed   
Upper Tribunal Judge Pitt

Date 4 March 2015