



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

Appeal Numbers: IA/26898/2014
IA/26899/2014
IA/26891/2014
IA/26894/2014
IA/26895/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 26 February 2015**

**Decision & Reasons Promulgated
On 4 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**DARA FARAMADE OKUSAGA
ABRAHAM OKUSAGA
(AND THREE CHILDREN: SAMUEL, SMITH, AND SANDRA OKUSAGA)
(NO ANONYMITY ORDER MADE)**

Respondents

Representation:

For the Appellant: Mr C Avery, Home Office Presenting Officer

For the Respondents: Mr A Seelhoff, Solicitor, of A Seelhoff Solicitors

DECISION AND REASONS

1. These are appeals that were allowed at the First-tier Tribunal. The appellant before the Upper Tribunal is the Secretary of State. For clarity

and convenience, however, I will refer to the parties in this decision as they were at the First-tier.

2. The appellants are a Nigerian family. The first two appellants, the parents, are long-term overstayers of visit visas. The children are aged 15, 10, and 7. The oldest has been in the UK for thirteen years; the middle child for nine years; and the youngest was born in the UK and is soon to be 8. Their appeals were allowed by First-tier Tribunal Judge McWilliam, in a decision promulgated on 19 November 2014. She allowed the appeals of the children under the Immigration Rules, with reference to paragraph 276ADE. The appeals of the parents were allowed on Article 8 grounds, but with reference to section 117B(6) of the Nationality, Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014).
3. Permission to appeal was granted by First-tier Tribunal Judge Davidge, on 8 January 2015. The grounds seeking permission to appeal referred to the **Azimi-Moayed** and **EV (Philippines)** cases, and argued that the judge had taken a fundamentally flawed approach which had led to an inadequate balancing exercise. The grant of permission was as follows: “On the face of the short reasoning provided by the judge the grounds are at least arguable.”
4. Mr Seelhoff, for the appellants, provided a Rule 24 response dated 21 January 2015. This included an extract from the debate in the House of Lords about the clause that became section 117B(6) of the 2002 Act.
5. Mr Avery, for the Secretary of State, referred to **Azimi-Moayed and Others (Decisions affecting children: onward appeals) [2013] UKUT 00197**, and the Court of Appeal case of **EV (Philippines) [2014] EWCA Civ 874**. His main submission was that the judge had not followed the correct reasoning steps to be found in these cases. The starting point should have been that it was in the best interests of the children to leave the UK with their parents. In addition the reasoning was thin, so it could not be said whether a different decision would have been reached if all of the factors had been taken into account.
6. Mr Seelhoff, for the appellants, made two main points in his submissions. The first was that it was clear from the decision, at paragraphs 34 and 37, that the judge had given proper consideration to the immigration history of the parents, which she referred to as being “extremely unattractive”. Her decision could not be criticised for not having taken into account or given weight to this factor. His second main point was that the facts were unusually strong. The oldest child was doing well at school and was close to his GCSEs. He had been in school for ten of the thirteen years that he had been in the UK, and all three children had now passed the seven year mark. If this was not a case that would succeed under paragraph 276ADE and section 117B(6) then it is hard to see what case would, and the judge’s decision in allowing the appeal was in effect the only one that any reasonable judge could reach. There had been no criticism of the judge’s

reliance on section 117B(6) and 117D of the 2002 Act. The relatively short reasoning was justified because the conclusion was obvious. Having identified the relevant case law and the relevant facts it was not a proper approach to infer that the judge had not applied the correct law to the facts.

Error of Law

7. As I indicated at the hearing I have decided that no material error of law has been established.
8. The point was made by both representatives that the reasoning in the decision was brief. I accept the submission made by Mr Seelhoff, however, that the reasoning was not inadequate in view of the facts, and in view of the relatively uncontentious outcome. I accept the point that he made that the position of the oldest child, who had reached such an important stage of his education in the UK, led to the relatively uncontroversial finding that it would not be reasonable at this stage to expect him to leave the UK, without the need for extensive reasoning in support.
9. It may be that in the brief reasoning the judge did not separate clearly two different aspects. The first was whether it was reasonable to expect the children to leave the UK, and the second was whether the parents could successfully resist removal on the basis of their children's best interests. The end point of the reasoning was that both the children and the parents should be permitted to remain in the UK, but it could be said that the two stages were not clearly separated in the decision.
10. That concern does, however, appear to me to be a relatively minor quibble that falls well short of establishing an error of law, let alone a material one. It appears to me that this was a relatively straightforward and uncontentious decision under paragraph 276ADE and with reference to section 117B of the 2002 Act. There is no need for me to consider the issue of whether it would have been open to the judge to reach a different decision on these facts, but it could certainly be said that any decision in relation to a child in the position of the oldest child in this case other than that it would be unreasonable to expect him or her to leave the UK would be surprising, and potentially open to challenge.
11. Having looked carefully at the steps identified in the **Azimi-Moayed** case I cannot see that anything in the judge's decision can properly be said to amount to a failure to follow the legal principles in that case. The same can be said of **EV Philippines**, which was in any event not directly concerned with children who had been in the UK for longer than seven years.
12. It was not suggested that there was any need for anonymity, and despite the involvement of the children I can see no particular reason in this

appeal to justify an anonymity order. No fee award was made, and in any event no issue could arise in relation to a fee award.

Notice of Decision

The Secretary of State's appeal to the Upper Tribunal is dismissed. No material error of law having been shown in it, the judge's decision allowing the appeals remains undisturbed.

Signed

Date **3 March 2015**

Deputy Upper Tribunal Judge Gibb