



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

Appeal Numbers: IA/29332/2013
IA/10043/2014
IA/10044/2014

THE IMMIGRATION ACTS

**Heard at Newport
On 21 September 2015**

**Decision & Reasons Promulgated
On 20 October 2015**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SS-A
SMA
ODA**

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr M Diwnycz, Home Office Presenting Officer

For the Respondents: Mr C Jacobs instructed by Duncan Lewis & Co Solicitors

DETERMINATION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) in order to protect the anonymity of the parties (the second and third respondents) who are children. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of any of the respondents. Any disclosure or breach of this order may amount to a contempt of court.

This order shall remain in force unless revoked or varied by a Tribunal or court.

2. Although this is an appeal by the Secretary of State, for convenience I will refer to the respondents as the “claimants” in this determination.

Introduction

3. The claimants are citizens of Nigeria who were born respectively on 18 March 1972, 28 December 2003 and 29 February 2008. The first claimant is the mother of the second and third claimants who are respectively her son and daughter. The claimants all came to the UK in February 2012 with entry clearance as visitors.
4. On 24 July 2012, the first claimant claimed asylum with her two children as her dependants. In a decision dated 23 August 2012, the Secretary of State rejected the first claimant’s claim for asylum (and that of her two children as her dependants) and also refused them leave to remain under Article 8 of the ECHR.
5. Further submissions were made on 21 August 2013. Thereafter, in decisions dated 11 December 2013, the Secretary of State again refused each of the claimants leave to remain in the UK. In consequence of those decisions, the Secretary of State made decisions to remove the claimants under s.10 of the Immigration and Asylum Act 1999 to Nigeria.
6. The claimants appealed to the First-tier Tribunal. In a determination dated 2 May 2014, Judge Trevaskis allowed each of the claimants’ appeals under Art 8.
7. The Secretary of State sought permission to appeal and on 29 May 2014, the First-tier Tribunal (Judge Lever) granted the Secretary of State permission to appeal.
8. The appeal first came before me on 23 September 2014. In a decision promulgated on 16 October 2014, I concluded that Judge Trevaskis’ decision could not stand as he had erred in law in finding in the claimants’ favour under Art 8 of the ECHR.
9. As a consequence, the appeal was re-listed for a resumed hearing before me in order to remake the decisions under Art 8.
10. That hearing took place on 21 September 2015.

The Issues

11. At the hearing, the claimants were represented by Mr Jacobs and the Secretary of State was represented by Mr Diwnycz.
12. It was common ground that the central issue in the appeal concerned the position of the third claimant. The third claimant suffers from sickle cell

anaemia, a number of related physical conditions and suffers from learning difficulties and has special educational needs.

13. On behalf of the claimants, Mr Jacobs placed no reliance upon Art 3 of the ECHR. However, he relied upon Art 8 of the ECHR and the third claimant's health, social and educational needs. It was common ground between the parties that if the third claimant's return to Nigeria would breach Art 8, then the appeals of all three claimants should succeed.
14. At the hearing, the first claimant, SS-A gave oral evidence. In addition, I heard oral evidence from the first claimant's social worker, KH.
15. Mr Jacobs also relied upon documents in the claimants' bundle submitted to the First-tier Tribunal and a further bundle of some 265 pages submitted for this appeal in the Upper Tribunal.
16. Mr Jacobs relied upon his skeleton argument for his central submission that it would breach Art 8 to return the third claimant to Nigeria having regard to the impact that would have on her health (in the absence of comparable treatment for her sickle cell anaemia), the evidence of increased risk of stroke both in travelling to Nigeria, the impact upon the third claimant as a result of the disruption to her environment both social and educational including that her "social" needs could not be matched in Nigeria and the risk to her of the first claimant, her mother being unable to cope and putting the third claimant at risk.
17. Mr Jacobs elaborated upon his skeleton argument in his helpful oral submissions and he placed reliance upon the Court of Appeal's decision in GS (India) and Others v SSHD [2015] EWCA Civ 40 and in AE (Algeria) v SSHD [2014] EWCA Civ 653 for his submission that, having regard to the fact that the third claimant was a child, on the unusual and complex facts of these appeals, the impact upon the third claimant's private life was such as to engage the humanitarian protection principle recognised in the "health" case law and her removal was disproportionate.
18. Mr Diwnycz briefly stated that he stood by the Secretary of State's decision to reject the claimants' cases under Art 8. However, he made no further submissions or arguments beyond taking that position.

Discussion

The legal principles

19. I begin with the relevant legal principles.
20. The claims are based upon Art 8 of the ECHR. Article 8 provides for the right to respect for an individual's private and family life. If a sufficiently serious infringement with that family or private life is established by an individual on a balance of probabilities, then it is for the Secretary of State to justify that infringement as being in accordance with the law, for a legitimate aim as set out in Art 8.2 and that the decision is a proportionate

one in the sense that it follows from a proper balance of the public interest against the individual's (and other family members') rights protected by Art 8.1.

21. It is not suggested that any of the claimants can succeed under the Immigration Rules. It is, therefore, necessary for them to establish "compelling circumstances" to justify a grant of leave outside the Rules (see Singh and Khalid v SSHD [2015] EWCA Civ 74).
22. Much of the claimants' cases turns upon the impact upon the third claimant's health and wellbeing if returned to Nigeria. It is clear from the so-called "health cases" that only in exceptional circumstances where there are compelling humanitarian considerations can an individual succeed under Art 3 of the ECHR when the essence of the claim is the impact caused by a differential in the provision of healthcare between this country and the country to which the individual is to be removed (see D v UK (1997) 24 EHRR 423; N v UK (2008) 47 EHRR 39 and N v SSHD [2005] UKHL 31).
23. The reason for that is, in essence, that such an individual's claim does not fall within the "paradigm" for which Art 3 provides protection namely, an intentional act by or with the approbation of the state (see, for example GS and Others per Laws LJ at [36]-[43]). However, in a "health" case the Strasbourg and domestic case law recognises that in exceptional cases where there are compelling humanitarian considerations, an individual may still succeed in establishing a breach of Art 3 (see, for example the passages cited by Laws LJ at [62] of GS and Others).
24. Equally, it is clear that the approach in "health" cases also applies to other cases concerned with "social or other forms of assistance and servicing" provided by a state (see, for example N v UK at [42]). The Strasbourg Court in SHH v UK (2013) 57 EHRR 18 accepted that the approach in "health" cases was equally applicable in a case where the needs of the individual included support for his disability and the consequences arose from "inadequate social provision" (see [92]). That case was cited without any suggestion of disapproval by Laws LJ in GS and Others at [60].
25. In short, exceptional cases of compelling humanitarian considerations apart, the case law at both the Strasbourg and domestic level makes plain that a state is under no obligation to provide medical, health or social care to an individual.
26. The claimants' case is, of course, not framed under Art 3 but instead under Art 8. Mr Jacobs did not seek to argue that the position under Art 8 was significantly different from that taken under Art 3 in health and social care cases. In my judgment, that follows from the decision of the Court of Appeal in GS and Others. Applying the earlier decision of the Court of Appeal in MM (Zimbabwe) v SSHD [2012] EWCA Civ 279, the Court of Appeal recognised that Art 3 and Art 8 mark very much in step in this

respect. So, at [87], Laws LJ said, referring to the exceptional case identified in D that:

“MM (Zimbabwe) also shows that the rigour of the D exception for the purposes of Article 3 in such cases as these applies with no less force when the claim is put under Art 8 ...”

27. Likewise Underhill LJ recognised that the “no obligation to treat” principle applied in Art 8 cases (at [111]).
28. Underhill LJ (at [111]) went on to identify two essential points:

“First, the absence or inadequacy of medical treatment, even if life-preserving treatment, in the country of return, cannot be relied on at all as a factor engaging Article 8: if that is all there is, the claim must fail. Secondly, where Article 8 is engaged by other factors, the fact that the claimant is receiving medical treatment in this country which may not be available in the country of return may be a factor in the proportionality exercise; but that factor cannot be treated as by itself giving rise to a breach since that would contravene the ‘no obligation to treat’ principle.”
29. At [109], Underhill LJ recognised that Art 8 – and the protection of “private life” – could be engaged by the consequences of physical or mental illness. Underhill LJ, also referred to two decisions of the Court of Appeal, AE (Algeria) (to which I have already referred) and R (SO (Pakistan)) v the Upper Tribunal [2013] EWCA Civ 1251 which concerned claims under Art 8 by children. In those cases, as I pointed out in my error of law decision, the Court of Appeal recognised that claims by children may have greater purchase under Art 8 than when those claims are made by adults. That may follow from the nature of compelling or humanitarian considerations when looking at the impact on the health and wellbeing of a child rather than an adult. It may also gain strength from the requirement to take into account a child’s “best interests” as a primary consideration (see ZH (Tanzania) v SSHD [2011] UKSC 4). However, even in children cases it is appropriate to consider the public interest reflected in the economic wellbeing of the country and the implications for the public finances of the future cost of treatment or care (see AE at [9]).
30. In my judgment, therefore, the fact that an individual claiming under Art 8 is a child may provide momentum to an argument that there are “compelling” circumstances of a humanitarian nature so as to fall within the exception recognised in the Strasbourg and domestic case law when applied in the Art 8 context.
31. Equally, it is clear from the case law that the assessment under Art 8 requires a full and rounded consideration of all the circumstances of all the claimants. This will include any impact upon a claimant’s private life by removal including any direct impact by the very act of removal itself. Indeed, that situation probably falls within the “paradigm” rather than requiring an individual to fall within the exceptional case recognised in the “health” cases.

The evidence and findings

32. With those principles in mind, I now turn to the evidence and my findings. In large measure, the facts are not in dispute and the evidence was not challenged by Mr Diwnycz before me.
33. The first claimant is 43 years old. She is the mother of the second and third claimants. She came to the UK in February 2012 as a visitor and has since overstayed. Her asylum claim was unsuccessful and is no longer pursued. The first claimant is highly educated. She has a Masters degree in Artificial Intelligence.
34. The second claimant is her son and is now aged 11 years old. He has recently commenced his secondary education in South Wales.
35. The third claimant is 7 years old. She suffers from a number of health conditions and has learning difficulties, behavioural problems and has special educational needs. All of these factors are helpfully listed, with reference to the relevant supporting documentation, in Mr Jacobs' skeleton argument at paras 4 and 10. The third claimant suffers from sickle cell anaemia and, as a result, has suffered a number of occipital cortical infarcts or strokes. She receives monthly blood transfusions and iron chelation which is necessary to prevent or lower the risk of iron overloading which is a detrimental side effect of regular blood transfusions. She also takes a number of medications.
36. The expert medical evidence from Dr Connor, a Consultant Paediatric Haematologist at the University Hospital of Wales Cardiff, which was not challenged before me and which I accept, is that as a result of her treatment the third claimant's risk of a further stroke has been reduced to 2% but, without the treatment there would be a 50% chance of stroke in the next one to two years. The risk of strokes can only be prevented through a bone marrow transplant and there are, at present, no suitable donors.
37. The expert evidence is that the third claimant would be unlikely to receive the necessary treatment which she requires to reduce the risk of strokes in Nigeria (see Dr Connor's letter dated 24 November 2014 at page 209 of the UT bundle). Dr Connor notes, having regard to the required treatment plan for the third claimant in the light of her risk of stroke that:

"It is my view that she ... is unlikely to get this level of treatment in Nigeria and if she were to return to Nigeria it would be to [her] detriment."
38. Dr Connor is, of course, based in the UK. However, his view is strongly supported by the evidence of Dr Otu who is at the Department of Haematology and Blood Transfusion at the University of Abuja Teaching Hospitals in Nigeria (see email at pages 236-7 of the UT Bundle) . There, Dr Otu points out that the state hospitals do not have the facility to carry

out the full care package required for the third claimant's condition, in particular "iron chelating agents are not commonly available or affordable" Dr Otu concludes that the third claimant's "revised treatment plan is not available in any part of Nigeria."

39. Further, Dr Otu states that even in a private hospital there are not:
"... the required facilities for standard management of sickle cell disease patients with stroke or who had previous history of stroke."

That latter category, of course, includes the third claimant.

40. Mr Jacobs did not raise specifically in his skeleton argument the risk, if any, to the third claimant of contracting HIV infection through blood transfusions. Instead, as I have already made clear, he focused upon the unavailability of the required treatment given the third claimant's particular circumstances, including her history of stroke. In the light of that, I note that the material put before me does identify a risk of HIV transmission through blood transfusion to patients with sickle cell disease (see Adewoyin and Obieche, "Hyper Transfusion Therapy In Sickle Cell Disease In Nigeria", *Advances in Haematology Vol 2014*, pages 1-8 at 5-6). Nevertheless, the real absence of care that the evidence establishes, in my judgment, is the unlikely availability of "iron chelation" treatment and the full revised treatment plan "required by the third claimant in order, in particular, to avoid a 50% risk of stroke".
41. There is one further matter which I must consider in relation to the third claimant's health. Dr Webb, a Reader and Honorary Consultant in Child Health in a letter at page 38 of the First-tier Tribunal's bundle states, in the light of the third claimant's history of stroke, that:
"Flying is contra indicated in people with sickle cell disease as the low pressure, and thus drop in oxygen saturation, can prove serious sickling crises which result in severe pain and tissue damage. A serious crisis can be fatal."
42. By contrast Dr Connor in a letter dated 25 July 2013 (at page 36 of the First-tier Tribunal's bundle) states that:
"Sickle cell does not preclude [the third claimant] from air travel".
43. Mr Jacobs submitted that Dr Connor's letter was written before the third claimant's history of strokes had been identified. However, after that point in time, Dr Connor in a letter dated 26 February 2014 (at pages 32-34 of the First-tier bundle) wrote that
"There is no data about the likelihood of a stroke following an air flight but patients with sickle cell tolerate air travel very well."
44. However, in his letter of 6 February 2014 (in other words shortly before the letter I have just referred to), Dr Connor states that:
"Discovery of this stroke is a significant finding and changes how we would manage [the third claimant]. She is at very high risk of another

stroke and we have been rather lucky that she has not had another one in the last year or so since she has been in the UK.”

45. Whilst the expert evidence could, perhaps, be a little clearer, there is at least some evidence that travel for the third claimant is, in itself, dangerous and leads to an increased risk of stroke; remembering always that the necessary treatment plan is unlikely to be available to the third claimant in Nigeria.
46. I turn now to consider the third claimant’s educational and special needs. A Statement of Special Needs dated 12 June 2015, together with a number of documents relating to social services’ intervention, is at pages 1-204 of the UT bundle. It is difficult to summarise succinctly the whole of this evidence. The essence of it is, however, as follows. The third claimant suffers from a number of behavioural problems and has special educational needs. She has a marked delay in her development, particularly in her speech, language and early learning skills. She has a number of behavioural/physical consequences. These are fully set out in the supporting material and also in the evidence of the first claimant. Her behaviour is challenging. The first claimant told me, and I accept, that if her daughter does not get what she wants, she can become verbally abusive, hits the first claimant and can throw things around the house. She told me that she sometimes has to use physical force to control the third claimant. Her behaviour is particularly challenging in the mornings. She told me that the arrangements for the third claimant to attend school had recently changed and there had been difficulties with the new taxi including that she had soiled it. The evidence is that the third claimant suffers from incontinence and wears incontinence pads throughout the day and night.
47. It is clear that the special education needs of the third claimant have resulted in her being placed in a school which can specifically meet those needs. At that school she receives 1:1 attention.
48. The first claimant told me that her daughter did not adjust to change easily. She had adapted to her new school, however, and now has friends at that school where there are other children with special needs.
49. The third claimant told me about the social services’ intervention earlier this year. It arose because the third claimant had physically chastised her. The first claimant told me that she found her daughter’s behavioural problems very challenging and sometimes, in effect, simply could not cope.
50. The social services’ intervention was also dealt with in the written and oral evidence of KH, Principal Social Worker within the Health Disability Team. There had been a reference to social services by the third claimant’s school. As a result, the third claimant was now on the child protection register and the first claimant had a family support worker whom she could contact if she needed support. In addition, there were a number of other elements to the child protection package, including

transport to school, bi-monthly overnight respite care and weekly respite care of 3.5 hours to relieve the first claimant and play school access during holidays. The first claimant told me that her daughter enjoyed that respite care. She said: "It's like checking into a hotel for her with lots of toys in".

51. The first claimant told me that she would not have the support she now receives through the social services if she returned to Nigeria and she was concerned that she would not be able to cope. KH told me in her oral evidence that the intervention had been very successful and had addressed the needs of the third claimant. She said that if the support was removed that would place the first claimant under additional stress and the progress that the third claimant had made developmentally and socially would be lost. KH told me that she would have protection concerns if the third claimant went to Nigeria, in particular physical chastisement from her mother.
52. That evidence was reflected in KH's written statement. In her statement (para 7), KH stated that:

"... the risks to [the third claimant] had decreased since our involvement."
53. KH's evidence was that the third claimant has developed socially since she has been attended a school for her special needs. KH observed in her statement (para 11):

"I believe that if [she] was to be returned to Nigeria, her development will retrogress and she will withdraw into herself. I also believe that any social interaction abilities that [she] has developed will be lost."
54. KH's evidence was that the Home Office has not approached the responsible social services in respect of, or to comment on, any protection measures which would be needed for the third claimant if she were removed to Nigeria (see para 9 of the statement). I only observe, given the duty of the Secretary of State under s.55 of the Borders, Citizenship and Immigration Act 2009, that that is surprising to say the least.
55. Mr Diwnycz did not seek, in his very brief submissions, to challenge the evidence of SH or, indeed, of the first claimant concerning the situation of the third claimant in the UK and the possible consequences to her if returned to Nigeria. There is no doubt that she presents very challenging behavioural problems and has particular educational needs. The social services' intervention, together with the placement of the third claimant in an appropriate school, has brought some stability to the third claimant. In particular, I was impressed with the evidence concerning the difficulties faced by the first claimant in managing her daughter without appropriate support. There are significant protection concerns for the third claimant without appropriate support, such as the need for the child protection intervention this year well illustrates. It is not suggested that a similar level of support, or indeed any support of this nature, would be available in Nigeria. The support which the first claimant could obtain from her

family in Nigeria would, in my judgment, be not of the same nature and limited. Her father is dead and her mother is 80 years old and frail needing assistance herself. Although four of her siblings live in Nigeria, they have their own families and would not, in my judgment, be in a position to provide anywhere near the kind of support provided by social services in the UK. Likewise, I was not directed to any material which would suggest that the third claimant's special educational need would be met in Nigeria.

56. Consequently, I find that if the third claimant returned to Nigeria her health and wellbeing is likely to significantly suffer.
57. First, there will be an increased risk of stroke (and consequential harm) by travelling to Nigeria and, in any event, in Nigeria as she is unlikely to have access to the full treatment plan, in particular iron chelation which she benefits from in the UK. I am satisfied that if the third claimant returns to Nigeria her health there is a real risk of her health being significantly harmed.
58. Secondly, given her learning disabilities and behavioural problems, the very change of circumstances in itself is likely to exacerbate and damage her wellbeing. Her behaviour is likely to deteriorate. The change in the third claimant's social environment is likely to exacerbate her behavioural problems in Nigeria.
59. Thirdly, the third claimant is unlikely to have her special educational needs met in Nigeria which, in itself, will harm her development and, as part of an enforced change of circumstances, result in detriment to her health and wellbeing.
60. Fourthly, the first claimant is unlikely to have the necessary support (such as provided by social services in the UK) to cope with the third claimant's behavioural problems. There is a very real prospect, therefore, that the third claimant will be subject to ill-treatment by her mother as occurred in the UK before social services intervened. The absence of the support provided by social services in the UK will expose the third claimant to child protection risks from her mother who will lack the necessary coping mechanisms to deal with the third claimant's resulting behavioural problems.
61. Taking all these matters into account, I am satisfied that it is not in the third claimant's best interests to return to Nigeria.
62. I turn now to consider the five-stage approach in Razgar [2004] UKHL 27.
63. Although it is undoubtedly the case that "family life" exists between the three claimants, the Secretary of State proposes to remove them together, or not at all, therefore they would be able maintain their family life in Nigeria. The crux of this appeal concerns the private life of the claimants, in particular that of the third claimant.

64. I am satisfied that the removal of the claimant will engage Art 8.1 on the basis of their private life. All have an established private life in the UK. That was not challenged. As regards the third claimant, for the reasons I have already given the impact upon her health and wellbeing will be significant if she is returned to Nigeria. That significant impact falls within the concept of “private life” and also engages Art 8.1 (see Singh and Khalid at [109]). For these reasons, I am satisfied that the Secretary of State’s decision engages Art 8.1. There is no doubt that the respondent’s decisions are in accordance with the law and also for a legitimate aim, namely the economic wellbeing of the country and its more usual avatar, the maintenance of effective immigration control which is in the public interest (see s.117B(1) of the Nationality, Immigration and Asylum Act 2002 (“NIA Act 2002”)).
65. The issue is one of proportionality bearing in mind that this is a “health” or “social care” case.
66. None of the claimants have any right under the Rules to remain in the UK. Their removal is in the public interest (see s.117B(1) of the NIA Act 2002). While I note that at least the first claimant speaks English (see s.117B(2)) that does not dilute the public interest in her removal. The same follows for the second claimant who, it is fair to assume as he has been educated in the UK, also speaks English. I was not told whether the first claimant (and the other claimants as her dependants) were or were not financially independent for the purpose of s.117B(3). Also, I note that the claimants’ private life has been formed whilst their immigration status was precarious or unlawful. However, in relation to the second and third claimants, given their ages and the third claimant’s learning difficulties, that private life was not established knowing of their immigration status.
67. In carrying out the proportionality assessment, I must consider all the circumstances, in the light of the “health” or “social care” cases it cannot be disproportionate to return an individual simply on the basis that they will receive less adequate treatment or care in their own country. I bear in mind what was said by Underhill LJ at [111] of GS and others:
- “... where article 8 is engaged by other factors, the fact that the claimant is receiving medical treatment in this country which may not be available in the country of return may be a factor in the proportionality exercise; but that factor cannot be treated as by itself giving rise to a breach since that would contravene the “no obligation to treat” principle.”
68. For the following reasons I have concluded that the removal of the third claimant has not been established to be proportionate.
69. First, the very act of removing the third claimant is likely to have a real and significant detrimental effect upon her health and wellbeing: (a) due to an increased risk of stroke in travelling; and (b) because the environmental and social changes to the third claimant, given her behavioural problems, will exacerbate those very problems. That is independent of any absence of health or social care in Nigeria..

70. Secondly, I am satisfied that the very particular facts of this appeal fall within the “humanitarian” exception. It has been recognised that cases such as D, and N are examples of the exceptional case where humanitarian concerns justify a claim under the ECHR and the categories are not closed (see N at [70] *per* Lady Hale and the Strasbourg Court in N v UK at [43]). None of the Strasbourg decisions have involved a child. As the Court of Appeal pointed out in AE and SQ, the “humanitarian” exception may more easily arise in a case concerned with a child. I agree that that is in principle correct and applies in this appeal.
71. This is an appeal where the child claimant suffers from both health and other conditions which require medical and social care support. Her needs are multifaceted. The impact upon her of not receiving treatment and necessary social care support is, in my judgment, acute and compelling in humanitarian terms. She is, even with intervention, a very challenging child. If treatment is removed, she runs a 50% risk of suffering further stroke and further physical and mental consequence that entails. It is difficult to see how, applying a humanitarian yardstick, creating that danger is justified. But, further, in the absence of educational provision to meet her special needs, her behavioural problems and development will also suffer significantly.
72. Thirdly, in the absence of the kind of support provided by social services in this country to the first claimant, the risk of child protection issues in relation to the third claimant arises. There is the potential, spoken to by both the first claimant and more importantly KH, the social worker of the first claimant harming the third claimant through chastisement. Again, I do not see how a humanitarian perspective can turn its gaze away from those factors and the impact they would have upon the third claimant’s health and wellbeing.
73. This, in my judgment, is an appeal which cries out for a humanitarian response despite the fact that, in some measure, the implications for the third claimant arise from the inadequate provision of health and social care in Nigeria compared to this country.
74. In my judgment, the circumstances are compelling and the potential harm to the third claimant of removal cannot be justified in a civilised society. In my judgment, those circumstances outweigh the public interest in the particular circumstances of this unusual case.
75. For these reasons, I am satisfied that the removal of the third claimant would breach Art 8 of the ECHR.
76. It was common ground that if the third claimant could not be removed, then the first and second claimants should also succeed in their appeals.

Decision

77. For the reasons set out in my earlier decision promulgated on 16 October 2014, the decision of the First-tier Tribunal to allow each of the claimants’

appeals under Art 8 involved the making of an error of law and those decisions were set aside.

78. I remake the decisions in relation to each claimant and allow each of their appeals under Art 8 of the ECHR.

Signed

A Grubb
Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

Since I have allowed the appeal I make a fee award in full in respect of any fee that has been paid.

Signed

A Grubb
Judge of the Upper Tribunal