



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/30781/2014**

Appeal Number:

IA/30876/2014

IA/30791/2014

IA/30795/2014

THE IMMIGRATION ACTS

Heard at Field House

Determination

On April 13, 2015

**Promulgated
On April 23, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR IVAN NITEFOR
MRS ULYANA NITEFOR
MASTER SVYATOSLAV OLIVER NITEFOR
MASTER MARYAN MARK NITEFOR
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Tarlow (Home Office Presenting Officer)
For the Respondent: Mr Hawkin, Counsel.

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The Appellants are husband, wife and sons. The first-named appellant entered the United Kingdom initially on June 20, 1999 as a student. His leave was extended until December 21, 2003 and on January 13, 2004 he submitted a fresh application for leave to remain as a student but this was refused on May 19, 2004. In June 2005 Mr Nitemoor returned to the Ukraine and married the second-named appellant. In September 2005 they returned to the United Kingdom using agents and false passports. The third and fourth named appellants were born in the United Kingdom in 2006 and 2009 respectively. In 2010 the first-named appellant submitted an application to stay under the ten year long residence rules for the whole family. This was refused on January 14, 2011 and on August 4, 2012 IS151A removal papers were served. No right of appeal was offered but following judicial review proceedings a refusal letter was issued on July 23, 2014 by the respondent.
3. The appellants appealed those decisions on July 31, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. The appeals came before Judge of the First-tier Tribunal Caswell on November 3, 2014 and in a decision promulgated on November 6, 2014 she allowed the appeals under article 8 ECHR.
5. The respondent lodged grounds of appeal on November 12, 2014 submitting the FtTJ had erred by materially misdirecting her self on article 8 ECHR.
6. On December 18, 2014 Judge of the First-tier Tribunal Levin gave permission to appeal finding it arguable there had been an error in law.
7. The matter came before me on the above date and the parties were represented as set out above. The appellant and his "wife" were in attendance.

ERROR OF LAW SUBMISSIONS

8. Mr Tarlow submitted quite simply the FtTJ had failed to attach sufficient weight to the appalling immigration history and the fact the children had no entitlement to be educated here in the United Kingdom. He argued the FtTJ had placed too much weight on the children's best interests and not enough on the public interest. He submitted there had been a failure to assess article 8 properly.
9. Mr Hawkins adopted written submissions he handed into me and stated the FtTJ had been fully aware of the issues raised but had


concluded that removal was disproportionate. This was a finding open to her and the FtTJ could not be faulted for her article 8 approach.

10. Having heard the submissions I reviewed the determination and submissions and refused the application.

ANALYSIS AND FINDINGS

11. The FtTJ was fully aware of the main appellant's atrocious immigration history and referred to this in her determination at paragraphs [1], [5], [7], [15], [20], [22], [32], [33] and [37]. She was mindful of the public interest in removal and balanced this against the factors that had been advanced by the appellants. She set out these factors in paragraphs [6], [8], [10], [19], [23], [24], [25], [27], [28], [29], [30], [31], [32], [34], [35], [36] and [37].
12. This was not a decision where the FtTJ disregarded the submission properly made by the respondent but she found after a full consideration of the evidence that article 8 was engaged and gave reasons for her decision.
13. I am not hearing this appeal de novo but considering whether the determination suggests an error in law. The FtTJ heard the evidence and considered all of the statements and whilst the same decision may not have been made by a different judge that is not the test. The decision was not perverse because the FtTJ gave reasons why she reached the conclusion she did.
14. Accordingly, I find the FtTJ reached a decision that was open to her and the respondent's appeal is dismissed.

DECISION

15.  There was no material error. The original decision is upheld.

16. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to alter that order.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT FEE AWARD

As I have dismissed the appeal I make no alteration to the fee award.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

STAR