



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/38624/2013**

Appeal number:

IA/38623/2013

THE IMMIGRATION ACTS

Heard at Field House

Determination

Promulgated

On January 16, 2015

On January 19, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MISS OLOLADE OLUFUNKE AJAYI
MR OLUWATAYO MORONFOLUWA JACKSON-AJIMUDA
(NO ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ambagh (Legal Representative)

For the Respondent: Mr Walker (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellants, born October 14, 1978 and March 17, 1977, are citizens of Nigeria. The first-named appellant was granted leave to enter the United Kingdom as a student on December 19, 2007. She was subsequently granted leave to remain as a Tier 4 student until December 31, 2011. The second-named appellant entered the United Kingdom as the spouse of the first-named appellant on June 8, 2010. His leave was extended in line with that of his wife's. They both applied to vary their leave to remain as tier 1 (Post-study work) Student migrant and dependant on December 28, 2011.

2. On October 19, 2012 the respondent refused both applications and took decisions to remove them by way of directions pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006.
3. The appellants appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on February 18, 2013. However on August 9, 2013 the respondent withdrew the decisions of October 19, 2012 and fresh decisions dated September 5, 2013 were served on both appellants including a similar removal decision.
4. The appellants appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on September 20, 2013 and on September 24, 2014 Judge of the First Tier Tribunal Walker (hereinafter referred to as the "FtTJ") heard their appeals and in determination promulgated on October 1, 2014 he refused their appellant's claims under both the Immigration Rules and ECHR legislation.
5. The appellants lodged grounds of appeal on October 9, 2014 and on December 1, 2014 Judge of the First-tier Tribunal Levin gave permission to appeal finding there were arguable reasons the FtTJ had erred in his approach to section 55 of the Borders, Citizenship and Immigration Act 2009 and possibly the date of application.
6. The matter came before me on the above date and both appellants were present and represented as set out above.

PRELIMINARY ISSUE

7. Mr Ambagh accepted that there was no merit to his first ground of appeal because although the original decision was withdrawn the date for compliance with the Rules was the date of application and at that date the appellants could not satisfy the Rules.

SUBMISSIONS

8. Mr Amgbah submitted the FtTJ failed to consider the children's best interests and consequently failed to have full consideration of article 8 ECHR. He failed to fully explore their situation.
9. Mr Walker opposed the application and adopted the Rule 24 response dated December 12, 2014. He also invited me to follow the decision of EV (Phillipines) & Ors v SSHD [2014] EWCA Civ 874 and find that the FtTJ did consider all that was required on the evidence placed before him. He submitted the FtTJ made findings open to him.

10. Mr Amgbah raised with me whether female genital mutilation had been raised at the original hearing and after checking the record of proceedings I indicated to him that it was not. In the circumstances he had no further submissions to make.

ERROR OF LAW ASSESSMENT

11. I remind myself that this is an application outside of the Immigration Rules under article 8 ECHR. Mr Walker did not dispute that the FtTJ could consider the case outside of the Rules. The FtTJ properly dismissed the appeal under the immigration Rules and noted they could not meet the requirements of Appendix FM or paragraph 276ADE of the Immigration Rules. Between paragraphs [27] and [29] he considered their claims.
12. The best interests of the child is paramount and recently the Court of Appeal in EV (Phillipines) & Ors v SSHD [2014] EWCA Civ 874 stated:

“35. A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens.”
13. There were two children and the FtTJ recorded this in his determination. He noted that the eldest child (aged three) attended nursery but there was no evidence adduced about his attendance at the nursery. The FtTJ had in his mind the fact that the children should live with their parents and he made this clear in paragraph [29] of his determination.
14. The FtTJ was fully aware of their ages and the fact they had been born here. He also took into account they were Nigerian nationals and had no entitlement to British citizenship. The youngest child was at home and the eldest had recently started nursery. The appellants both had family in Nigeria and there was nothing preventing them returning especially as they have spent the majority of their lives there. They both came here on limited leave and had no expectation to be allowed to remain.
15. Although he did not mention “best interests of the child” I am satisfied he had regard to the relevant factors as set out in EV

and made findings that were clearly open to him. He was satisfied it was proportionate to require the whole family to return to Nigeria where they could continue their family and private lives together.

16. Although the first-named appellant had studied here and had applied to remain as a Tier one migrant the Tribunal made clear in in Nasim and others (Article 8) [2014] UKUT 00025 (IAC) at paragraph [20] that this was insufficient-

“We therefore agree with Mr Jarvis that [57] of Patel and Others is a significant exhortation from the Supreme Court to re-focus attention on the nature and purpose of Article 8 and, in particular, to recognise its limited utility to an individual where one has moved along the continuum, from that Article’s core area of operation towards what might be described as its fuzzy penumbra. The limitation arises, both from what will at that point normally be the tangential effect on the individual of the proposed interference and from the fact that, unless there are particular reasons to reduce the public interest of enforcing immigration controls, that interest will consequently prevail in striking the proportionality balance (even assuming that stage is reached).”

17. The FtTJ had regard to all of the above matters and taking into account the children’s best interests I am satisfied it would be proportionate to remove the appellants from the United Kingdom and consequently I refuse their applications.

DECISION

18. The decision of the First-tier Tribunal does not disclose an error in law and the original decisions shall stand.



19. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No such order was made in the First-tier and I see no reason to make such an order now.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I revoke the earlier fee award as I have dismissed the appeal.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

STAL