



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

Appeal Number: IA/52061/2013
IA/52068/2013
IA/52064/2013

THE IMMIGRATION ACTS

Heard at Field House

On 11th June 2015

**Decision & Reasons
Promulgated
On 16th June 2015**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MR OLATUBOSUN ADEYEMI
MS IMISIOLUWA OLUWANISUNAYOMI ADEYEMI
MS MODUPE MUYIWA ADEYEMI**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Furner (Birnberg Peirce & Partners)

For the Respondent: Mr A Melvin (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an application to the Upper Tribunal by the Appellants in relation to a Determination and Reasons of Judge Gillespie promulgated on 14th July 2014. The Appellants are Nigerian and are husband, wife and their

daughter. They came to the UK as visitors in March 2006, when the child was two years of age and overstayed. They made application to remain on Human Rights grounds in September 2013. Those applications were refused by decisions dated 7th October 2013. It was their appeals against those decisions which came before Judge Gillespie in July 2014. He dismissed the appeals.

2. The application for permission to appeal was initially refused by the First-tier Tribunal but then granted by an Upper Tribunal Judge. The main ground was that the Judge prevented the four additional witnesses from giving evidence about their experiences in Nigeria.
3. At the Upper Tribunal's direction the solicitor who represented in the First-tier Tribunal provided an affidavit as to what occurred and the Judge's Record of Proceedings was provided.
4. While the evidence that the Judge excluded may have been irrelevant, I am unable to conclude that to be the case as it was excluded. It is fair to say that it was not contained in the witnesses' statements and the Home Office Presenting Officer objected to its inclusion.
5. However, I find that the Judge erred in excluding evidence. Its relevance and the weight to be attached to it can only be determined after it has been heard. On the basis that the Appellants were prevented from adducing the evidence that they wished in support of their appeals, the hearing was procedurally unfair and so the determination must be set aside in its entirety and the appeal reheard in the First-tier Tribunal.
6. I direct the Appellants and their representatives to file full witness statements of all the evidence that they intend to call and additional evidence is unlikely to be permitted on the day next time.
7. The appeal to the Upper Tribunal is allowed and the matter remitted to the First-tier Tribunal.

Signed

Date 12th June 2014

Upper Tribunal Judge Martin