



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

Appeal Numbers: IA/31122/2014
IA/31125/2014
IA/31132/2014
IA/31140/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 November 2015**

**Decision & Reasons Promulgated
On 10 February 2016**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**T A
A O A
O P O A
I A**

(anonymity direction made)

and

**First Appellant
Second Appellant
Third Appellant
Fourth Appellant**

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss J Heybroek, Counsel instructed by Bestway Solicitors
For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellants. This direction applies to, amongst others, all parties. Any

failure to comply with this direction could give rise to contempt of court proceedings. I make this order because the case concerns the welfare of children.

2. They appeal with the permission of the Upper Tribunal a decision of the First-tier Tribunal on 20 March 2015 to dismiss their appeals against the decision of the respondent on 9 July 2014 to remove them from the United Kingdom having refused them leave to remain in an application brought on human rights grounds with reference to Article 8 of the European Convention on Human Rights.
3. In broad terms it is the appellants' case that removing them would interfere disproportionately with their private and family lives. This is particularly so because of the length of time that the family has spent in the United Kingdom.
4. The appellants are citizens of Nigeria. The first appellant was born on 5 March 1972. He has lived in the United Kingdom since July 1999. The second appellant is his wife. She was born on 9 June 1976 and has lived in the United Kingdom since August 2014. The third and fourth appellants are their sons. The third appellant was born in September 2007 and the fourth appellant was born in July 2009. They have lived in the United Kingdom all of their lives.
5. The first appellant entered the United Kingdom lawfully and has had leave for most but not all of the time that he has been in the United Kingdom. The second appellant appears to have had leave as the dependant of the first appellant but does not appear to have had leave in any other capacity at any time. The respondent's letter of 9 July 2014 spills over some twelve pages explaining why the applications were refused but the bulk of the letter consists of rehearsal of the immigration history of the appellants or explains in tedious detail why particular Rules that no-one ever thought did apply in fact do not apply.
6. At page 10 there is a paragraph dealing with the rights of the third and fourth appellants. It points out that the appellants were then aged 6 and 5 years and although they had lived in the United Kingdom all of their lives in the event of their return they would be returning as a family unit to their country of nationality. There was an education system available for them in Nigeria and there was no evidence that they would be unable to manage there. The respondent considered any disruption in their private and family lives to be proportionate and consistent with the obligation under Section 55 of the Borders, Citizenship and Immigration Act 2009 to make the welfare of children a primary consideration.
7. The Respondent also considered paragraph 35(3B) of HC 395 which codifies the kind of exceptional circumstances that might make a difference in applications of this kind. The Respondent worked through the requirements of the Rule and found no factors that assisted the

appellants. It also pointed out that the first and second appellants' leave ran out in 2008 and they had remained in the United Kingdom since 30 April 2008 without permission.

8. I considered carefully the skeleton argument provided Miss Heybroek for the First-tier Tribunal. One of the reasons I do this is she complained that it was not considered properly by the First-tier Tribunal Judge but, with respect, it is a useful summary of her case which she developed orally.
9. Miss Heybroek recognised that her case really depended on the rights of the third appellant who by the time the First-tier Tribunal Judge heard the case had been in the United Kingdom for more than seven years. This is not a case where it can be argued that, for example, any of the appellants have a compelling reason to remain in the United Kingdom beyond the amount of time that they had spent there. It is not a case, for example, of exceptional medical need or other compelling circumstances. Neither is it a case where it can be argued they will be returning to unconscionable conditions in Nigeria.
10. The skeleton argument refers to paragraph 276ADE(1)(iv) of HC 395 and as Ms Brocklesby-Weller pointed out the qualification of having lived continuously in the United Kingdom for at least seven years depended on the applicant having achieved that age "at the date of application". It follows that it does not matter when the application was actually considered. There is a requirement under the Rules that the applicant is aged 7 when the application is made. Otherwise the Rule does not apply. Nevertheless the judge was required to consider the appellant's rights under Article 8 of the European Convention on Human Rights at the time he made his decision which was 20 March 2015. Miss Heybroek's primary submission is nothing if not clear. She said:

"It is submitted that it always has been, and continues to be, the Secretary of State's policy that, absent compelling countervailing fear factors such as criminality, if a child has resided in the UK for more than seven years it will be a disproportionate interference with their Art.8 rights to disrupt their lives and remove them from the UK."
11. She supports this contention by reference to the "grounds of compatibility" with Article 8 of the European Convention on Human Rights statement by the Home Office that was prepared when the Immigration Rules on family and private life (HC 194) was introduced to parliament. At paragraph 27 it states:

"The Rules deal clearly with how to treat British citizens and other children in cases where they would otherwise intend to remove their parent(s) and how countervailing factors should weigh in the decision. There are some circumstances where children may be allowed to stay on a permanent or temporary basis on best interests grounds. The key test for remaining on a permanent basis is around the length of continuous residence of a child in the UK - which we have said seven

years, subject to countervailing factors. We consider that a period of seven continuous years spent in the UK as a child will generally establish his sufficient level of integration for family and private life to exist such that removal would normally not be in the best interests of the child. A period of seven years also echoes a previous policy (known as DP5/96) under which children who had accumulated seven years' continuous residence in the UK were not deported, which is still referenced by the Courts on occasion. In policy terms, we would not propose a period of seven years as this would enable migrants who entered the UK on a temporary route (for example a route limited to five years in the UK) to qualify for settlement if they had brought children with them. The changes are designed to bring consistency and transparency to decision-making."

12. I think that that word "deported" is incongruous and does not reflect the policy accurately but that is the word the Secretary of State chose to use.
13. I cannot agree with Miss Heybroek's submission. The Secretary of State's policy is set out in her Rules. The Rules give great weight to seven years' residence in the United Kingdom in the case of a child who has achieved that before the application is made. It may well be that the terms of the Rule represent a shift in policy so that it is now the date of application that is crucial rather than the amount of time that the child has spent in the United Kingdom. The Secretary of State did not claim to be reproducing DP5/96 but to be echoing it. Given that the grounds of compatibility were dealing with amendments to the Immigration Rules which are applied when people make applications this is an unremarkable proposition but if it represents a change in policy it is a lawful change in policy. Any fixed period in which it is assumed that a person will have acquired a right to remain in the United Kingdom is arbitrary and provided it is always possible in appropriate cases to make a decision outside the Rules or as an exception within the Rules there is nothing objectionable in principle either to having an arbitrary policy or to changing it.
14. I remind myself of the arbitrary nature of the decision. Given the ease with which applicants can make fresh applications or rely upon the pressures in the system to cause delay the Secretary of State would have to have a policy of refusing applications in the case of children with, say, five years' leave, to make sure that seven years had not been expended by the time any appeal was heard. I do not suggest the Secretary of State should do this. I do it to emphasise that it is an arbitrary level set at seven years and the judges are not required necessarily to allow appeals by children who have established themselves in the United Kingdom for seven years.
15. It is not at all clear to me that the grounds of compatibility have any relevance except in the context of construing a Rule. Conceivably it might make it difficult for the Secretary of State to disagree with a judge who said that a child had acquired a weighty private and family life after seven

years but that is not what has happened here and that is a point that should be argued if and when it becomes relevant.

16. Ms Heybroek's skeleton argument also referred to Section 117B of the Nationality, Immigration and Asylum Act 2002 but that includes the qualification "It would not be reasonable to expect the child to leave the United Kingdom." When the Secretary of State is deciding what is reasonable she must apply her policies but Section 117 does not apply to the Secretary of State's decision-making but to decisions made by a court or tribunal. It is for the court or tribunal to decide what is reasonable and that is what this judge has done. I do not agree with Miss Heybroek that the Secretary of State has committed herself to a policy of allowing any child with seven years' continuous residence to remain in the United Kingdom subject to countervailing factors or otherwise. It follows that the apparent failure of the judge to consider the skeleton arguments is immaterial. The arguments are misconceived.
17. I see no arguable error in the judge's finding that the interference consequent of removal is reasonable. It may have been more helpful if the First-tier Tribunal had said more about the rights of the children but the evidence before the Tribunal about their integration and role in the United Kingdom although important cannot amount to much. The evidence was that the appellants as a family are very involved in the local church. That is a *relevant* factor because it shows integration in the community outside the family but I do not see how it can be thought of as a particularly *weighty* factor. There is no reason to think that the church could not carry on without them and although their departure would represent some sort of change in the life of that congregation and its place in the community it does not have the makings of a finding that removal is disproportionate. The third appellant appears to be doing well at school. That is wholly to his credit but again is not a particularly weighty matter.
18. It is recognised that although the first seven years in a child's life are important for Article 8 purposes it is the years after infancy, say the age of 4, that are more important. I also agree with Miss Heybroek that there are reasons to think that the First-tier Tribunal Judge has been unnecessarily "sniffy" about the first appellant's qualifications. The role of a pastor in a church varies enormously from church to church but there is no reason to think that the first appellant is not sincere in what he does or not qualified to do what he is expected to do, save that some might think that leading a church in the United Kingdom at a time when he did not have permission to be there was discreditable. This does not matter for present purposes. It certainly does not impact on the rights of the children.
19. In paragraph 76 of the decision the First-tier Tribunal finds there will be no compelling or compassionate or other reasons why the public interest and the maintenance of a firm and fair immigration control should not prevail over the rights of the individuals. It noted the age of the children. It is

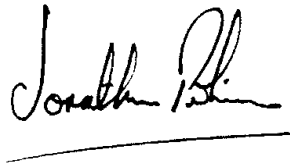
noted that they do not complain of any health problems. There is nothing other than the length of time on which the decision to allow the appeal on human rights grounds could turn.

20. Having thus answered Miss Heybroek's contention that there is a policy requirement to allow children who have lived in the United Kingdom for seven years to remain there can be nothing wrong with the First-tier Tribunal's decision.
21. It follows therefore that I uphold the decision of the First-tier Tribunal and dismiss the appellants' appeals.

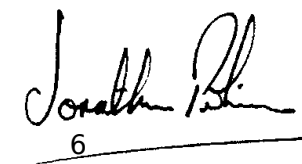
Notice of Decision

22. The appellants' appeals are dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 4 February 2016



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