



IAC-FH-AR-V1

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

Appeal Numbers: IA/42245/2014
IA/42255/2014
IA/42258/2014
IA/42259/2014
IA/43064/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 December 2015**

**Decision & Reasons Promulgated
On 15 January 2016**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

**AMIN ISHOLA AKANBI
OLUWADAMILOLA SAMUEL AKANBI
JOSEPH OLUWATIMISOLA AKANBI
ATINUKE RAMAT AKANABI
OLUWADOYINSOLA ESTHER AKANBI
(NO ANONYMITY DIRECTIONS MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J. Komolafe, solicitor at Dele Adedeji Associates Ltd

For the Respondent: Mr C. Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The First Appellant was born on 24 October 1972 in Nigeria. It is his account that he entered the United Kingdom in 2003 or 2004 but at the appeal hearing a document was produced, which indicated he had actually applied for entry clearance from Lagos on 26 April 2005 but his application had been refused. He was not tendered for evidence at the hearing to explain this document. Therefore, I have assumed that it was accurate.
2. According to the entry clearance document, he was refused entry clearance on 29 April 2005. He did not appeal against this decision but at some later date he entered the United Kingdom illegally. On 30 May 2005 the Second Appellant, his wife, and the Third and Fourth Appellants, their children, entered the United Kingdom as visitors. They had multi-entry visas but were only entitled to remain here as visitors for six months at any one time. Therefore, from 30 November 2005 they were in the United Kingdom without leave.
3. On 19 September 2012 the Appellants applied for leave to remain on human rights grounds. They were refused leave on 15 July 2013 with no right of appeal. On 11 October 2013 they brought a judicial review on the basis that they were entitled to a right of appeal. On 13 March 2014 they withdrew their judicial review because the Secretary of State had agreed to reconsider their case.
4. On 13 June 2014 the Secretary of State decided to remove them and this gave rise to a right of appeal, which they exercised. An appeal was listed for 19 September 2014 but the Respondent withdrew her decision and agreed to reconsider it but when she did so, on 3 October 2014, she refused their application.
5. On 22 October 2014 they appealed against this further decision and on 18 February 2015 their appeal was dismissed by Designated Judge McCarthy and First-tier Tribunal Judge Hetherington. On 9 March 2015 they applied for permission to appeal and on 5 June 2015 First-tier Tribunal Judge Levin granted them permission to appeal. When doing so, he said that, if it was the case that the Third Appellant had applied to give oral evidence and had been refused, then the Tribunal's failure to give reasons for this refusal would amount to an error of law. However, at the error of law hearing, the Appellants' solicitor accepted the statement made by the two judges, which said that no such application had been made, and this ground of appeal was withdrawn.
6. First-tier Tribunal Judge Levin also found that it was arguable that the Tribunal had erred in law by failing to consider the evidence of the First Appellant in his witness statement that the Appellants would be destitute and would have nowhere to live in Nigeria. But at error of law hearing, the Appellants' solicitor relied on the fact that his statement said that:

“My dad is deceased but my mum is still alive and lives in a rented room. We do not have a family home. I have no means of survival in Nigeria or to look after the children. My cousin who assists us now financially cannot fund their education in Nigeria. My wife and I will find it very difficult to get a job and look after the children because the unemployment rate in Nigeria is very high. My parents-in-law are alive in Nigeria but in their 70s. They live in rented accommodation. My wife has two brothers and three sisters all in Nigeria. Her three sisters are married and live with their families and her two brothers live with their parents but are unemployed. I have a cousin here, Mr Philip Adebeye who is supporting us. I also have an uncle here.”

7. The Home Office Presenting Officer accepted that the Tribunal’s decision was brief but submitted that I have to consider whether it addressed the necessary facts and law.
8. In paragraph 21, in response to what was said in the First Appellant’s statement, the Tribunal noted that:

“Some of the difficulties claimed are economic. It is asserted that a cousin of the First Appellant financially supports the family. No reason has been advanced as to why this cousin, who now provides financial support, would be unable to do so in Nigeria.”
9. At the error of law hearing the Appellants’ solicitor, who had not represented them at an earlier stage in the proceedings, drew my attention to a letter on his file from this cousin, which said that he could no longer support them. But this letter was not on the court file or the Respondent's file and was not in the Appellants’ bundle. In contrast, in the Appellants’ bundle there was a letter from the cousin saying he had been supporting them financially and morally since they had been in the United Kingdom. Therefore, on the evidence which was before the Tribunal, I find that it was reasonable for it to conclude that he would be able to support the Appellants if they were returned to Nigeria and were looking for work.
10. The Appellants had asserted that the Tribunal had not addressed the First Appellant’s statement in sufficient detail but, as noted above, the statement confirms that actually the Appellants do have a number of relatives still alive and living in Nigeria in their own accommodation. I also find that the fact that they are living in rented accommodation does not mean that they could not accommodate the Appellants; at least in the short term. I have also taken into account the fact that it is not said that the Fourth Appellant’s sisters and their husbands were unemployed. It was not necessary for the Tribunal to refer to every detail of the evidence as long as the decision it reached was reasonable in the light of this evidence. The decision was not unreasonable as the First Appellant’s statement confirmed that the Appellants would have potentially have some support in Nigeria.

11. At the error of law hearing the Appellants' solicitor also argued further that it would amount to a breach of Article 3 of the European Convention on Human Rights for the Appellants to be removed to Nigeria. However, I find that there was no evidence to establish that the Appellants would face inhuman and degrading treatment if removed to Nigeria. In any event, this does not appear to have been an argument raised before the Tribunal at their appeal hearing.
12. The other ground of appeal on which leave was given was that the Tribunal failed to make a sufficiently detailed proportionality assessment.
13. I accept that the decision was a short one but this needs to be viewed in the context of a hearing during which the Appellants were not called to give oral evidence and the statement upon which they relied was very short. In addition the vast majority of the Appellants' bundle dealt with the children's attendance at school. There was a very brief letter from the Fourth Appellant, which just adopted the First Appellant's statement. In addition, there were two letters from the children which said they did not want to go back, predominantly because they had friends and were at school here, and there were some very short letters from members of the community who know them and a few pictures of the children.
14. The Appellants placed significant weight on the children's attendance at school in the United Kingdom. However, I am bound by the Court of Appeal's decision in *EV (Philippines) and Others v Secretary of State for the Home Department* [2014] EWCA Civ 874.
15. At paragraph 22 of the decision, the Tribunal relied on paragraph 22 of *EV*, which states:

"If it is overwhelmingly in the child's best interests that he should not return, the need to maintain effective immigration control may well not tip the balance. By contrast, if it is in the child's best interests to remain, but only in balance, the results may be the opposite."
16. I find that this is why in the second sentence of paragraph 22 of its decision the Tribunal used the word "overwhelming". I find that it did so because it was introducing the test contained in *EV*.
17. I am bound by this Court of Appeal judgment and I note that in its judgment the Court of Appeal correctly referred to and applied Section 55 of the Borders, Citizenship and Immigration Act 2009, *VW (Uganda)* [2009] EWCA Civ 5, *ZH (Tanzania)* [2011] UKSC 4 and *MK (India)* [2011] UKUT 00475 (IAC) and reminded itself of the jurisprudence on best interests before concluding at paragraph 58 of its decision that:

"... the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If neither parent has a right to remain then that is the background against which the assessment is conducted. Thus ultimately the question will be is it

reasonable to expect the child to follow the parent with no right to remain to the country of origin and that was particularly the case here.”

18. As was said at the beginning of the Tribunal’s decision, the first question was did the children have a right to remain under paragraph 276ADE(4). This was a two stage test which had to consider whether the children had been in the United Kingdom for more than seven years and then whether it would be reasonable for them to be removed from the United Kingdom. I find that this is the test, which was adopted in *EV* and also by the Tribunal in this case.
19. In paragraph 60 of *EV* the Court of Appeal continued by finding that:

“In our case none of the family is a British citizen. None has the right to remain in this country. If the parents are removed, then it is entirely reasonable to expect the children to go with them. As the immigration judge found it is obviously in their best interests to remain with their parents. Although it is, of course, a question of fact for the Tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world.”
20. There may be some cases where there are other additional factors which relate to the children of parents without leave to remain, for instance if they have severe medical problems or educational problems. This is not the case here. It is not said that the children have any other difficulties apart from the fact that they would like to remain here to finish their education and to remain with their friends. It is also not said that there are any other additional factors which would make it difficult for the First and Fourth Appellants to look after their children in Nigeria. Therefore, I find that it was reasonable for the Tribunal to rely upon *EV*.
21. I also note that at paragraph 24 of its decision the Tribunal also relied on *Zoumbas* [2013] UKSC 74 where it was said

“There is no irrationality in the conclusion that it was in the children’s best interests to go with their parents to the Republic of Congo. No doubt it would have been possible to have stated that other things being equal, it was in the best interests of the children that they and their parents stayed in the United Kingdom so that they could obtain such benefits as health care and education. But other things are not equal. They are not British citizens, they had no right to future education and health care in this country. They are part of a close-knit family and are of an age which their emotional needs could only be fully met within that family unit. Such integration, as had occurred into United Kingdom society, would have been predominantly in the context of that family unit. Most significantly, the decision maker concluded that they could be removed to the Republic of Congo in the care of their parents without serious detriment to their wellbeing.”

22. It is also my view that in paragraph 29 of the decision the Tribunal did look at the substance of Section 117B and apply that as it had to in the proportionality exercise. And again in paragraph 29 this exercise is dealt with briefly but in my view it is sufficient because they look at the substance of Section 117B and that emphasis was clearly on the children's education and therefore it is not surprising that the decision actually mainly dealt with that in the earlier paragraphs because that was the case as put before the Tribunal at the hearing.

Notice of Decision

23. Therefore, I find that there were no errors of law in the Tribunal's decision and that its decision should stand.

Nadine Finch

Signed

Date: 7 January 2016

Upper Tribunal Judge Finch