



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/08544/2015

HU/08550/2015

HU/08557/2015

HU/08562/2015

HU/08564/2015

THE IMMIGRATION ACT

Heard at Field House

On 12th July 2017

Decision & Reasons

Promulgated

On 14th July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**MO, SO, SOO, ARO & ATO
(ANONYMITY DIRECTION MADE)**

Respondents

Representation:

For the Appellant: Mr Tarlow Senior Home Office Presenting Officer

For the Respondent: Mr Symes, Counsel instructed by AJO Solicitors

DECISION AND REASONS

1. The Respondents are all citizens of Nigeria. The proceedings concern the status and interests of children. In order to protect the interests of the children I make an anonymity direction.

2. This is an appeal by the Secretary of State for the Home Department against the decision of First-tier Tribunal Judge Cockrill promulgated on 22 November 2016 whereby the judge allowed the appeals of the respondents on the basis that the decisions of the Secretary of State, to refuse the respondents leave to remain in the United Kingdom, breached the respondents' Article 8 rights to family and private life in the United Kingdom.
3. By a decision of 16th May 2017 First-tier Tribunal Judge Page granted permission to appeal to the Upper Tribunal. The permission is granted in the following terms: -

"2. I first set out the immigration history of these appellants summary. The first appellant arrived in the UK as a visitor on 22 September 2007 and overstayed. The 2nd appellant had been issued with a visit Visa on 2 March 2005 and overstayed. The 3rd and 4th appellants had leave, again as visitors, up to 29 February 2009 and they overstayed. The 5th appellant was born in this country on the [] 2008 and she has never left the UK. The judge allowed the appeals of all 5 appellants. The appeals of the first, 2nd and 5th appellants were allowed under Article 8 outside the rules and the 3rd and 4th appellants were allowed under paragraph 276 ADE 1(iv). The 3rd and 4th appellants, on the basis of whom the 3 other appellants were allowed were primarily allowed on the basis that they were being educated in the United Kingdom. The respondent complains that nowhere in the decision of the judges it evident that the judge has taken account of the decision of the Court of Appeal in EV (Philippines) and others v SSHD [2014] EWCA Civ 874 which address the issues that arose in a similar case to the one before him. In EV it was held that the desirability of being educated at public expense in the UK did not, in the circumstances of that case, outweigh the benefit to the children of remaining with their parents. The Court of Appeal noted that 'is just as we cannot provide medical treatment for the world, so we cannot educate the world'. The respondent has set out the ratio of the Court of Appeal in EV and said that none of the appellants in this appeal is a British citizen's and the children are being educated at public expense. Put shortly, it is complained that the judge has given too much weight to the details of the appellant's education and their desire to stay in the United Kingdom the respondent complains that the judge has failed to apply wider public interest issues and in particular to give weight to the poor immigration history of the first and 2nd appellants. These grounds of appeal are clearly arguable so permission is granted.

4. Permission to appeal having been granted, the appeals appeared before me to decide whether there was an error of law in the original decision.
5. As set out in the permission to appeal the 1st, 2nd, 3rd and 4th respondents have entered the United Kingdom's at various times as visitors and overstayed. The first respondent, as indicated, entered on 22 September 2007 and overstayed. The 3rd and 4th respondents entered with the first respondent on 22 September 2007 and overstayed. At the time of entry the 3rd respondent would have been 6 years of age and the 4th respondent would have been 4 years of age.
6. The 2nd respondent entered on 2 March 2005 and overstayed.
7. The 5th and youngest respondent was born in the United Kingdom in August 2008 but appears never to have had any leave to remain in the United Kingdom.
8. There is no reference anywhere to any attempt by any of the respondents to regularise their status or contact the Home Office in any way until the present application made on 15 May 2015. By that time the 3rd and 4th respondents had been in the United Kingdom for over 7 years.
9. In approaching the issues the judge had identified that the 3rd and 4th respondents fell for consideration under paragraph 276ADE (iv) which provides:-

'276 ADE Requirements to be met by an applicant for leave to remain on the grounds of private life

276ADE (1) the requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

i) does not fall for refusal under any of the grounds in Section S-LTR.1.2 to S-LTR.2.3 and S-LTR.3.1 in Appendix FM ; and

...

iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK.'

10. It is suggested in respect of the 3rd and 4th appellants that in considering that criteria consideration has only been given to the fact that they are in education and accordingly no consideration has been

given to the guidance given in the case of EV (Philippines) & others v SSHD [2014] EWCA Civ 874.

11. The following paragraphs from the judgement of EV are relied upon in the grounds of appeal: -

“58. in my judgement, therefore, 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 one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?”

59. On the facts of ZH it was not reasonable to expect the children to follow their mother to Tanzania, not least because the family would be separated and the children would be deprived of the right to grow up in the country of which they were citizens.

60. That is a long way from the facts of our case. In our case none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. 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 the best interest 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.”

12. There was much within the facts as outlined which are relevant to the present proceedings. The only factor that was of significance was the fact that the children may have had a right to remain but their commitment appeared to be to the education system and nothing else.
13. In the present case besides the various school reports that had been submitted on behalf of the 3rd and 4th appellants there was also a report from a social worker, Mr Livingston McKoy, a social worker with 25 years experience in dealing with children’s cases. The judge had noted that Mr McKoy’s report had commented professionally upon the interests of the children highlighting that the children needed permanency and long-term security. Mr McKoy had assessed the

circumstances that would face the family if they were returned to Nigeria in assessing the best interests of the children and assessment had been made not only on the basis of what the children had said but also on the basis of information provided by teachers and others that were in contact with the children. Of significance in Mr McKoy's report were the references to the depth of connections and roots that the children had in the community in which they lived, educational, social and otherwise. Mr McKoy also attended and gave live evidence at the hearing.

14. Besides the evidence of Mr McKoy there were also reports from the children school but also letters from the children themselves. In respect of the 3rd appellant, the eldest child, it was noted that he had reached an age where he was taking AS level examinations; he had significant achievements in school including being selected for a maths challenge at national level; playing for the school football team; representing the school in athletics. The 3rd respondent had aspirations to continue his education and to qualify in the professions. While clearly education was a significant aspect of the child's life it was not the only connection or root that the child had developed and was of significance in the child's life.
15. To claim that the judge has merely assessed the education opportunities and facilities available to the 3rd respondent seems to ignore the rest of the evidence that was considered by the judge especially the evidence from Mr McKoy.
16. Similarly with regard to the 4th respondent the judge not only consider the report by Mr McKoy but also the child's involvement in cross-country running football his involvement in school at the school leadership team, his aspirations and desires. Again there was significant evidence from Mr McKoy that was considered by the judge detailing the depth of connection and roots that the respondent had developed
17. Whilst not falling within paragraph 276 ADE(iv) the judge further considered the position of the 5th child.
18. The judge then considered the test of reasonableness and in so doing started by considering the guidance given in ZH (Tanzania) v SSHD [2011] UKSC 4, Azimi-Moayed & others (decisions affecting children: onward appeal) Iran [2013] UKUT 00197 and MA (Pakistan) [2016] EWCA Civ 705. I would note that the last case post dates the case of EV. The emphasis being in the case law but this is an assessment of article 8 and whether or not it is reasonable for the child or children to leave the United Kingdom.

19. In argument before me the respondent's representative submitted a bundle of case law which besides the cases cited includes MM (Lebanon) [2017] UKSC 10 and Butt [2017] EWCA Civ 184. In relying upon the last case attention was drawn to paragraph 30 of the judgement as highlighted, in which the following guidance is given :-

"I consider that the court's reluctance to attempt to give prescriptive guidance as to the weight to be given to particular factors and the need for a careful and informed evaluation of the facts of the particular case and the role of an appellant court when considering an assessment of proportionality by a lower court to which I referred at [19] and [20] above suggests that the assessment of the specialist Tribunal as to proportionality should also be respected unless it is clear it has misdirected itself in law."

20. To categorise the assessment of the judge as only concentrating upon the educational advantages that are available clearly ignores the other evidence that the judge considered in assessing the best interests of the 2 minor appellants that qualified under paragraph 276 ADE and whether it was reasonable for them to return to Nigeria.
21. It cannot be said having assessed that that the judge failed to take into account the immigration history of the parents. In paragraph 35 the judge was clearly mindful of the adverse immigration history and gave it significant weight in commenting that theirs was not a particularly attractive basis of being allowed to remain in the United Kingdom. Even taking that into account the judge approached the issues correctly by indicating that he was not going to punish the children for the misdemeanours of the parents.
22. Having considered all of that evidence the judge was satisfied that the best interests of the children were to remain in the UK. In coming to that conclusion the judge commented that he placed significant weight upon the reports and evidence given by Mr McKoy. He was mindful that this was not condoning the actions of the 1st and 2nd respondents as is evident from paragraph 49 of the decision. However having taken all that into account the conclusion that he came to was that it was not reasonable for the 3rd and 4th appellants to be removed from the United Kingdom. Having come to that conclusion an assessment had to be made with regard to the remaining respondents.
23. The conclusions with regard to the 3rd and 4th appellants have been fully justified. The judge has properly approached the issues with regard to the remaining respondents and has given valid reasons why they should be allowed to remain in light of the findings with regard to the 3rd and 4th appellants.

Appeal Number: HU085442015
HU085502015
HU085572015
HU085622015
HU085642015

24. The judge has given valid reasons for the conclusions reached. On the basis of the evidence presented the judge was entitled to come to those conclusions. Accordingly there is no error of law in the decision.

Notice of Decision

25. I dismiss the appeal to the Upper Tribunal and uphold the decision of the First-tier Tribunal.

Signed

Date

Deputy Upper Tribunal Judge McClure