



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

Appeal Number: IA/14181/2015
IA/14194/2015
IA/14200/2015
IA/14208/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 27 February 2017**

**Decision Promulgated
On 28 January 2019**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**FESTUS [O]
OLUBUKOLA [O]
AND DEPENDENT CHILDREN**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant:

Mrs [O] (in person)

For the respondent:
Officer

Mr P. Singh, Senior Home Office Presenting

DECISION AND REASONS

1. The appellants appealed against the respondent's decision to refuse a human rights claim. First-tier Tribunal Judge Hanbury ("the judge") dismissed the appeal in a decision promulgated on 26 July 2016.
2. Mrs [O] ("the appellant") attended the hearing with her husband. They were unable to afford legal representation for the hearing. Mrs [O] spoke on their behalf. Nevertheless, their legal representatives submitted an updated bundle of documents. The documents included evidence to show that there had been significant developments in their family circumstances since the First-tier Tribunal hearing. Mr [O] became unwell and was eventually sectioned under the Mental Health Act 1983 for a period of three months from October to December 2016. As a result of his erratic and aggressive behaviour, arising from his mental health problems, social service intervened to assist the family. Mrs [O] and the children are now living in separate accommodation because it was deemed to be in the best interests of the children. Mr [O] is said to be receiving a considerable amount of support. Social services consider that it is important for the children to continue to have contact with their father and are enabling supervised visits. At the same time, further assessments are ongoing in order to ascertain the extent of the difficulties faced by the appellants' daughter, who is said to show traits of autism. No clear conclusion has yet been reached as to whether she does in fact have the condition.
3. None of this is strictly relevant to the issue of whether the First-tier Tribunal decision involved the making of an error of law, but it forms the background to the current situation should an error of law be found.
4. Although the appellant explained that social services were seeking to help them to find a solicitor with a legal aid contract, I decided that it would be better to explore the error of law issues raised in the grounds of appeal before deciding whether it was necessary to adjourn the hearing on the ground that the appellant wanted an opportunity seek alternative legal representation. The appellants were legally represented when the application for permission to appeal was made. The grounds were drafted by counsel.

Decision and reasons

5. After some discussion of the grounds of appeal and the First-tier Tribunal decision, Mr Singh accepted that the judge might not have given sufficient consideration to the speech and language therapy report. While the report is mentioned at [38] the judge made no findings as to what weight, if any, he placed on the evidence. Nor was the content of the report considered, in particular, the fact that the child was said to show possible traits of autism. The report was not taken into account in assessing whether the children would have access to suitable education in Nigeria. While the judge considered the position of the children at [42] and mentioned that the respondent had taken account of their welfare as a "primary consideration", in fact, no clear findings were made as to what the best

interests of the children were. In the absence of any clear findings as to what the best interests of the children were, there is nothing to show that the judge gave appropriate weight to their best interests as a primary consideration.

6. The second ground that I considered to have some merit was the judge's failure to consider the evidence put forward regarding the stigma that Mr [O] might face in Nigeria as a result of the disabilities that he now suffers following a stroke. While it was open to the judge conclude that Mr [O]'s condition was not such that it reached the high threshold required to breach Article 3 of the European Convention, the additional discrimination he might face, over and above his already challenging medical condition, was material to a proper assessment of the proportionality of removal. While this point, taken alone, was unlikely to be determinative, it is of sufficient importance, taken with the failure to make clear findings relating to the best interests of the children, to undermine the First-tier Tribunal's overall assessment of the proportionality of removal.
7. The other grounds of appeal outline various disagreements with aspects of the decision, but do not disclose any errors of law that were likely to make any material difference to the overall outcome of the appeal. Although many of the judge's findings were entirely open to him to make on the evidence, for the reasons given above, I am satisfied that it is the matters that he failed to take into account, or to make clear findings on, which disclose errors of law. Those matters relating to the best interests of the children and the treatment that Mr [O] might face on return to Nigeria were sufficiently material to set aside the First-tier Tribunal decision.
8. Because I was satisfied that there was an error of law in the First-tier Tribunal decision it was not necessary to adjourn the hearing. Given the recent developments in the family circumstances Mr Singh agreed that it was appropriate to remit the appeal to the First-tier Tribunal for a fresh hearing so that the current situation can be given appropriate consideration. Given the circumstances it is important that the appellants are represented by a competent solicitor who is experienced in immigration law if at all possible. The appellants should continue to make efforts, if necessary, with the assistance of social services, to find suitable representation as soon as possible.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision is set aside

The appeal is remitted to the First-tier Tribunal for a fresh hearing

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Signed  Date 28 January 2019
Upper Tribunal Judge Canavan