



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case No: UI-2022-005240**  
**UI-2022-005241**  
**UI-2022-005238**  
**UI-2022-005239**

**On appeal from: HU/55659/2021**  
**HU/55658/2021**  
**HU/55661/2021**  
**HU/55660/2021**  
**IA/14095/2021 & Others**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 23 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**OLUMIYA AFOLABE OLUTADE**  
**FOLASHADE ESTHER OLUTADE**  
**ANUOLUWAYO ELIZABETH OLUTADE (A MINOR)**  
**AKANNI JOSHUA OLUTADE (A MINOR)**  
**(NO ANONYMITY ORDER MADE)**

Respondents

**Representation:**

For the Appellant: Mr Stephen Walker, a Senior Home Office Presenting Officer

For the Respondents: Ms Sandra Akinbolu of Counsel, instructed by Gillman-Smith Lee, Solicitors

**Heard at Field House on 3 March 2023**

**DECISION AND REASONS**

1. The Secretary of State appeals with leave against the decision of the First-tier Tribunal allowing the claimants' appeals against her decision to refuse them leave to remain in the UK pursuant to paragraph 276ADE or on human rights grounds outside the Immigration Rules HC 395 (as amended).
2. For the reasons set out in this decision, I have come to the conclusion that the Secretary of State's appeal should be dismissed. The decision of the First-tier Tribunal in the claimants' favour therefore stands.

### **Procedural matters**

3. **Vulnerable appellant.** The fourth appellant, who is a boy now 7 years old with severe Autistic Spectrum Disorder is a vulnerable person and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. He will not be giving evidence and no adjustment was required at the hearing for him.
4. **Mode of hearing.** The hearing today took place face to face.

### **Background**

5. The claimants are all citizens of Nigeria, a husband and wife and their two minor children, the elder of whom has severe autism.
6. The first and second claimants entered the UK together in June 2009, initially as visitors, but were granted Tier 4 student visas. They have been long-term overstayers.
7. The fourth claimant is a boy, now aged 7, with autistic spectrum disorder of a very severe kind. The third claimant is his younger sister, who is now nearly 5 years old. Both children were born in the UK.
8. The claimants accepted at the First-tier Tribunal hearing that they cannot bring themselves within the Rules.
9. The Secretary of State does not dispute that these claimants have a private life in the UK, in addition to the family life they have with each other.
10. The main basis of the claimants' case is that it is not proportionate to expect them to return to Nigeria given the difficulty for disabled children such as the third claimant, including a risk that he would be perceived to be a witch.

### **First-tier Tribunal decision**

11. First-tier Judge Bonavero allowed the appeals principally because he considered that for a child such as the fourth claimant, the risk in Nigeria of accusation of witchcraft, general stigmatisation, or abuse in residential institutions meant that it was in his best interests to remain in the UK.

12. The Judge had the benefit of an independent social worker report from Mr Maswood Ahmed MBA, MSc, CQSW, DipSW, AASW, PTA, RSW and also an October 2021 Asylum Research Center (ARC) report entitled *Nigeria: Children and Young People with Disabilities*. He gave weight to the contents of both these reports.
13. The judge was satisfied that, even applying appropriate weight to the public interest in controlling immigration, removing this family to Nigeria would result in unjustifiably harsh consequences.

### **Permission to appeal**

14. The Secretary of State argued that the social worker's report went beyond his remit and expertise and should have been given little or no weight. She objected to the lack of a finding on the support which the first and second claimants' parents and siblings in Nigeria could provide. She considered that it was not open to the First-tier Judge to rely on the and noted that the Tribunal had apparently relied on the ARC Foundation report which 'generalises discrimination against those with mental health as being the result of witchcraft', arguing that 'this report has not been considered with the facts of this case'.
15. The Secretary of State complains that reliance on the ARC Foundation report 'would mean anyone with mental health issues would lead to a grant of leave, this the [Secretary of State] asserts is a misdirection of law'.
16. First-tier Judge Cruthers granted permission to appeal to the Upper Tribunal. He considered that:

"In particular, I consider it arguable that the Judge *might have found* that the social worker who is referred to in his/her paragraph 16 had gone well beyond his expertise/remit – and so *should have considered* whether that reduced the weight that the Judge could give to the social worker's report. It may also be particularly arguable that the Judge has failed to consider the potential support available to this family on any return to Nigeria (given that the adult appellants *may both have their own parents and siblings residing in Nigeria*)."

[*Emphasis added*]

### **Upper Tribunal hearing**

17. In making my decision, I have regard to the oral submissions at the hearing and to the documents which had been before the First-tier Judge, including both the challenged expert reports (the ARC report was made available after the hearing).
18. I note that the Secretary of State's challenges are to findings of fact and weight arising out of those materials. Her grounds do not raise any legal issues, except the rather generic subheading 'making a material misdirection of law on any material matter'.

19. It is well settled that the weight to be given to expert evidence is a matter for the fact-finding Judge, unless perversity or *Wednesbury* unreasonableness can be shown. Mr Ahmed's report stated that he had 'extensive experience of undertaking international social work assessments and placing children abroad' and 'vast experience of running child protection training programmes, particularly involving community organisations dealing with cultural and religious issues'. He says this about his broader experience:

"I have extensive experience of writing immigration reports relating to human rights, children's best interests and welfare issues. I am an independent social worker of Bangladeshi origin. I speak fluently Sylheti and Bengali. I can speak basic Arabic, Urdu and Hindi. I have travelled to Asia, Africa, Middle East and Europe. I undertake social work assessments in the UK and internationally and have written immigration reports for immigration Tribunals. I have knowledge and understanding of the cultural and religious issues affecting families from diverse backgrounds."

It cannot be said that it was perverse for the First-tier Judge to give weight to the international aspect of Mr Ahmed's report.

20. I further note that the fourth claimant, who was born in the UK, has now passed his 7<sup>th</sup> birthday. He is profoundly autistic: the ARC report has links to, and quotations from, significant materials on disability inclusion and the resources for children with ASD in Nigeria. It was neither perverse nor *Wednesbury* unreasonable for the First-tier Judge to give weight to the resources contained in the ARC report and the conclusions he drew as to the difficulty which the fourth claimant would have in Nigeria were open to him on the evidence.

## **Conclusions**

21. For all of the above reasons, I do not consider that the Secretary of State's grounds of appeal disclose any error of law, or error of fact at the level of an error of law, without which the Upper Tribunal may not interfere with the First-tier Tribunal's decision to allow the claimants' appeals. Her appeal cannot succeed.

## **Notice of Decision**

22. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Judith A J C Gleeson  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 6 March 2023**