



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

Appeal Number: IA/06604/2014  
& IA/06614/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13<sup>th</sup> November 2014**

**Determination  
Promulgated  
On 28<sup>th</sup> November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**E F O & O F O  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mrs Heybrook, Counsel instructed by Solicitors  
For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants are citizens of Nigeria and are both minors. As these proceedings impact upon the welfare of children, I make an anonymity direction.
2. Though this is an appeal by the respondent, I have for the purposes of the present decision maintained the designation of the parties as they appeared in the original determination.

3. This is an appeal by the respondent against the determination of First-tier Tribunal Judge Miles promulgated on 23 July 2014, whereby the judge allowed the appellants' appeals against the decisions of the respondent dated the 18 January 2014 to remove the appellants from the United Kingdom. The judge allowed the appeals on Article 8 grounds only.
4. By decision made on 9<sup>th</sup> October 2014 permission to appeal to the Upper Tribunal was granted. The case appeared before me to determine in the first instance whether or not there was a material error of law in the original determination.
5. The appellants are aged 14 and 13 and are siblings. The appellants entered the United Kingdom on 15 April 2005 on visit visas. They had been brought to this country by their mother. The appellants have stayed in the United Kingdom living with a lady that claims to be their aunt. As noted by the judge on page 7 of the determination, third full paragraph, the parents of these appellants effectively dumped the appellants on the lady that is claimed to be their aunt.
6. In dealing with the Immigration Rules the judge found that the appellants did not meet the requirements of Appendix FM. Their parents were alive in Nigeria and the relationship of the appellants to the aunt was open to question as there was no documentary proof of such. There were no circumstances advanced, which would justify the appellants remaining in the United Kingdom under the rules, when they have parents and family members in Nigeria. There were no compelling compassionate reasons, whether medical or otherwise. There were no insurmountable obstacles to their return to Nigeria. There was no reason to suppose that the appellants could not be cared for in Nigeria by their parents.
7. Within the letter of refusal the respondent had raised a number of issues relating to why it would be reasonable to expect to the appellants to return to Nigeria and leave the United Kingdom. The judge on the first paragraph on page 6 had set out that the appellants' representatives had not dealt with any of the issues raised. In the light of that the judge found that the appellants failed to meet the requirements of paragraph 276 ADE.
8. The judge had therefore found that the appellants could not meet the requirements of the Immigration Rules.
9. The judge went on to consider the issues with regard to Article 8 of the ECHR. The judge ultimately allowed the appeal on article 8 grounds. The judge referred to the fact this was not the case of the appellants' parents seeking to piggyback and seek status through their children in the United Kingdom.
10. There is a problem with the approach taken by the judge with regard to Article 8 and the best interests of the children. The best interests of the children would in the normal course of events lie with being with their parents. The fact that the parents have abrogated responsibility by leaving

the children with an aunt in the UK does not appear to me to be a good reason for not to recognise the importance of being with their natural parents.

11. With regard to children in general there are safeguards to ensure that children are not being trafficked or being exploited. There are local authority child care services which have to investigate the circumstances in which children are living, especially where the children are not living with their parents. Before a Court or Tribunal gives approval to an arrangement whereby children are brought to the United Kingdom and are allowed to remain here with a relative in unspecified circumstances proper checks need to be carried out by the appropriate child care authorities to ensure that the welfare and interests of the child are properly protected.
12. The Tribunal cannot without involvement of the appropriate authorities give sanction to such an informal arrangement. To do so could conceivably be sanctioning an exploitative relationship without proper investigation.
13. Equally careful consideration has to be given as to what would happen to the children if they were to be returned to Nigeria. The Tribunal should be reluctant to sanction arrangements, which permit parents to abrogate responsibility for children by bringing them into the United Kingdom and leaving them here.
14. Whilst the judge has made a finding that the best interests of the children are to remain in education in the United Kingdom, that seems to ignore that the best interests of children generally are to remain with their parents and that before children are placed in the care of persons other than their parents proper assessment of the suitability of the individual to care for the children needs to be made and the suitability of the arrangements in which the children will live. That is a minimum that would be undertaken with regard to any adoption or fostering arrangement. The Tribunal cannot be seen to be sanctioning such arrangements without proper childcare safeguards having been undertaken.
15. Accordingly without a proper investigation of the circumstances of the children within the United Kingdom by the appropriate child care authorities, the assessment of Article 8 is legally flawed.
16. For the reasons set out, there is a material error of law in the original determination. I find that the appropriate course is to remit the appeal back to the First-tier Tribunal. Those acting on behalf of the appellants will need to obtain reports from the appropriate authorities to substantiate that these children are being properly looked after in the United Kingdom in any event and that the person looking after them is suitable to undertake such responsibility.
17. There is a material error of law in the determination. I remit this appeal to the First-tier Tribunal for hearing afresh on all issues.

Signed

Date **28<sup>th</sup> November 2014**

Deputy Upper Tribunal Judge McClure