

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



Appeal Number:

IA/27997/2013

THE IMMIGRATION ACTS

Heard at Field House

On 12 March 2014

Determination

Promulgated

On 17 June 2014

**Before
JUDGE DRABU CBE**

**Between
MR B A S B +4**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ANONYMITY DIRECTION MADE

DETERMINATION AND REASONS

Representation:

For the appellant: Miss R Baruah of Counsel instructed by G Singh Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer.

1. The Secretary of State has brought these appeals before the Upper Tribunal but in this determination, to avoid confusion, I have referred to the parties in the same manner as they were in the proceedings before the First-tier Tribunal - the Secretary of State continues being referred to as respondent.
2. The appeals were heard by Judge Boyes at Hatton Cross on 19 November 2013 and in a determination promulgated on 20 January 2014 he allowed the appeals of all five appellants under Article 8 of ECHR. He concluded that the Respondent's decision is a disproportionate interference with each of the Appellant's rights under Article 8 of the ECHR. Whilst dismissing the appeals of the other four appellants under Immigration Rules, the Judge allowed the appeal of the third appellant under the Immigration Rules but said

that had he dismissed it under Rules he would have allowed it on human rights grounds.

3. The respondent has contended in the grounds of appeal seeking permission to appeal to the Upper Tribunal that the determination is in material error of law for reasons given in the grounds.
4. Judge Osborne, a Judge of the First-tier in granting permission to appeal has said in his decision, "Each Appellant has his/her own appeal. The Judge set out the relevant law at paragraph 13 of the determination. In an otherwise detailed and well-reasoned determination in which the Judge patently engaged with the evidence, it is at least arguable that the Judge failed to give effect to the specific wording of paragraph 276ADE(iv) which acknowledges the requirement to be met by an applicant would be fulfilled if the applicant is under the age of 18 years and has lived continuously in the UK for at least seven years, but then adds "and it would not be reasonable to expect the applicant to leave the UK. It is at least arguable that it would be entirely reasonable to expect an 18 year old child to leave the UK in the company of his two parents and his fellow siblings, all of whose appeals were dismissed under the Immigration Rules."
5. Mr BASB is the father of the three appellants, namely, AAOB, KAOB and TAO. The principal appellant, BASB is a Nigerian national. He was born in Lagos in 1970. The second appellant named KMAO was born in Lagos in 1978 and is the wife of the first appellant and the mother of the other three appellants who are all nationals of Nigeria. Their ages are 10 and 5. The fourth and fifth appellants are twins. The first appellant claims to have entered the UK in 2006 and has been here unlawfully throughout. It is claimed that the second appellant entered the UK with the third appellant with the help of an agent in August 2005 and have remained in the UK unlawfully ever since. The fourth and the fifth appellants are 5 years old and have resided in the UK since birth.
6. Judge Boyes heard oral evidence from the first and second appellants and four further witnesses. He also took account of the 202 pages bundle of documents and skeleton argument filed on behalf of the appellants as well as the respondent's bundle.
7. Before me Miss Everett representing the respondent said that she would rely on the written grounds of appeal, which she said were "straight forward". She said that essentially the Judge had given inadequate reasons in respect of the third appellant and that the

Judge should have followed the principles of law laid down in the case of **Zoumbas ([2013] UKSC 74** and should have dismissed all the appeals.

8. In response Ms Baruah argued that the determination was a detailed and well- reasoned decision and did not have any error of law. She submitted that the decision made in the Zoumbas case was made on the facts of that case as each case has to be decided on its own facts. She said that the facts in the case of Zoumbas were materially different. In this case the Judge had engaged with all the evidence and had made clear findings of fact and the conclusions drawn from those facts were correct in law. She said that another Judge may have reached a different conclusion but that would not in itself be sufficient to find error of law in the decision made by Judge Boyes. Miss Everett did not add any more to her arguments and asked that if I find material error of law, I should remake the decision and dismiss the appeals of all the appellants.
9. I have given the most careful consideration to the determination of Judge Boyes as well as the written and oral arguments advanced before me, including the respondent's grounds upon which permission was granted and the decision of Judge Osborne who granted permission to appeal.
10. I agree with Judge Osborne that the respondent's grounds are "arguable" and I also agree with him that the determination of Judge Boyes is detailed and well reasoned which demonstrates that the Judge engaged with the evidence. However, I note, Judge Osborne has got the age of the third appellant wrong describing him as an "18 year old child" whereas he was only 10. This error could have skewed the decision of Judge Osborne to grant permission but this is purely speculative on my part.
11. The respondent contends that in looking at the claim of the third appellant first under the Immigration Rules, the Judge erred in law. It is argued that the Judge should have looked at the claims of the first and the second appellant first. Upon careful examination of the determination I find little substance in this argument. Paragraph 36 of the determination is clear. The Judge therein states, "I must first determine whether any, or all of the appellants are able to meet the requirements of the Immigration Rules..... " The contents of this paragraph are a correct statement of law as is applicable to the appellants in these appeals. The Judge has correctly found that the third appellant qualifies to remain in the UK under the Rules. The contents of paragraphs 47 and 48 of the determination show that

Judge Boyes consideration of the third appellant's claim has been full. He cites the principles set out in the decision in **E-A (Article 8 - best interests of child) Nigeria [2011] UKUT 315 (IAC)** fair and reasoned. I have not been able to find any material error of law with respect to any of the appellants. He weighed all the evidence in balance and came to a conclusion that was open to him. The determination is detailed and the findings of fact are clear and sound. The Judge has applied relevant law correctly.

12. In the circumstances, I dismiss the respondent's appeal. This means that the decision of Judge Boyes to allow the appeals of all the appellants stands, there being no material error of law in his determination.

Judge K Drabu CBE
Deputy Judge of the Upper Tribunal
5 June 2014

Direction regarding anonymity - rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

Unless and until a tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of Court proceedings.

Judge K Drabu CBE
Deputy Judge of the Upper Tribunal
5 June 2014

