Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/02152/2014
AA/02116/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 24th April 2015	**On 5th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

T O I (FIRST APPELLANT)
F I C O (SECOND APPELLANT)
(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms N Patel of Lei Dat & Baig Solicitors
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellants appeal against a decision of Judge of the First-tier Tribunal De Haney, promulgated following a hearing on 2nd May 2014.

2. The Appellants are children born in December 2009 and October 2011 respectively on whose behalf asylum claims were made on 14th August 2012. The Appellants are Nigerian citizens.

3. The claims were refused by letters dated 11th February 2014 and the Respondent issued Notices of Immigration Decisions dated 19th March 2014 which indicated that decisions had been taken to remove the Appellants from the United Kingdom and if they did not leave voluntarily, directions would be given for their removal to Nigeria.

4. The appeals were heard together by the First-tier Tribunal (FtT) on 2nd May 2014 and dismissed on asylum, humanitarian protection and human rights grounds.

5. The Appellants were granted permission to appeal to the Upper Tribunal by Upper Tribunal Judge Reeds who found that the sole arguable Ground of Appeal related to the judge's consideration of the country materials when considering the risk on return to Nigeria of the two Appellants, whom he accepted were brought up in different religions. It was arguable that the judge had not set out or analysed the evidence and given reasons. Judge Reeds found that the judge had not erred in finding that the Appellants did not face a risk of FGM.

6. At a hearing on 23rd January 2015, after hearing representations from both parties, I set aside the decision of the FtT, and the hearing was adjourned for further evidence to be given, so that the decision could be re-made by the Upper Tribunal. In brief summary, I found that the judge had not adequately analysed the background evidence to which reference had been made on behalf of the Appellants, and had not given adequate reasons for his decision. The full reasons for setting aside the FtT decision are contained in my decision dated 28th January 2015. Although the FtT decision was set aside, the findings made that the Appellants would not be at risk of FGM were preserved.

Re-making the Decisions

The Law

7. The Appellants would be entitled to asylum if they are recognised as refugees, as defined in Regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 as persons falling within Article 1A of the 1951 Geneva Convention. The onus is on the Appellants to prove that they have a well-founded fear of persecution for a Convention reason (race, religion, nationality, membership of a particular social group or political opinion) and they are outside their country of nationality and are unable or, owing to such fear, unwilling to avail themselves of the protection of that country.

8. If not entitled to asylum the Appellants would be eligible for humanitarian protection under paragraph 339C of the Immigration Rules if they establish substantial grounds for believing that if removed from the United Kingdom, they

would face a real risk of suffering serious harm, and they are unable or, owing to such risk, unwilling to avail themselves of the protection of the country of return.

9. The Appellants claim that to remove them from the United Kingdom would breach Articles 2, 3 and 8 of the 1950 European Convention on Human Rights (the 1950 Convention). In relation to Articles 2 and 3, the Appellants must establish that there are substantial grounds for believing that returning them to Nigeria would create a real risk that they would be killed, or subjected to torture or inhuman or degrading treatment or punishment.

10. In relation to Article 8 the Appellants must satisfy the requirements of Appendix FM in relation to family life, or paragraph 276ADE of the Immigration Rules in relation to private life, or show that there are compelling circumstances not sufficiently recognised under the rules, for Article 8 to be considered outside the rules. If Article 8 is considered outside the rules, the Appellants must prove that they have established a family and/or private life in the United Kingdom, and that the Respondent's decision would have consequences of such gravity as to engage Article 8, and the Respondent must then show that the decision is lawful, necessary and proportionate.

11. In considering the Appellants' claim to be at risk if returned to Nigeria, the burden of proof is on the Appellants, and the standard of proof is a reasonable degree of likelihood. I must consider the circumstances as at the date of hearing.

The Appellants' Claim

12. The claim made on behalf of the Appellants is that they would be at risk if returned to Nigeria. It is accepted that both are Nigerian citizens, but T is being brought up as a Christian, and F as a Muslim.

13. K is the mother of both Appellants. The first Appellant has had no contact with her biological father. The second Appellant was born in the United Kingdom and Z, who is a Pakistani citizen, is her father. Z is the stepfather of T.

14. Z and K, who is a Nigerian citizen, met in the United Kingdom in February 2010. Z has a daughter from another relationship born in August 2012.

15. Z and K married in the United Kingdom on 29th January 2013. Z arrived in the United Kingdom in 2002 and made a claim for asylum in 2006 but did not pursue the claim and no decision was ever made. He has no immigration status in the United Kingdom.

16. K arrived in the United Kingdom as a visitor in September 2009 and overstayed without leave. She claimed asylum on 1st March 2011. The claim was refused on 31st March 2011 and her appeal heard on 12th May 2011 and dismissed on all grounds. K has no immigration status in the United Kingdom.

17. It is claimed on behalf of the Appellants that they would be at risk of harm from Boko Haram if returned to Nigeria. Both also claim asylum based upon their religion. It is claimed that they would be at risk because if returned the family would be living with Christians and Muslims in one household. In relation to F, it is claimed that she would be at risk because of her ethnicity or race, as she is of mixed race, her father being a Pakistani citizen, and her mother being Nigerian. It is contended that she would be regarded as a non-indigene.

The Refusal

18. The Respondent issued reasons for refusal letter dated 11th February 2014 in relation to each Appellant. In each case the letter runs to seventeen pages.

19. In brief summary the Respondent accepted the ages and nationality of the Appellants. It was not accepted that being in a mixed faith family would put the Appellants at any risk. The Respondent referred to background information, and contended the evidence did not disclose any risk on that basis.

20. It was not accepted that Boko Haram posed a real risk to the Appellants, as that organisation operated in northeast Nigeria. The Respondent submitted that there was no evidence of risk in other areas of Nigeria and the Appellants could relocate to those other areas. It was pointed out that the Appellants' mother originates from Lagos in the south of Nigeria.

21. The Respondent believed that there was within Nigeria a sufficiency of protection from the authorities, and a reasonable option of relocation to an area other than northern Nigeria.

22. The Respondent did not accept that the second Appellant would be persecuted as a result of having a father who is not a Nigerian.

23. In relation to Z, the Respondent took the view that although he could not be removed to Nigeria, it was open to him to accompany his family to Nigeria by making the appropriate application to the Nigerian authorities.

24. The Respondent did not accept that the Appellants would be at risk in Nigeria and therefore took the view that they were not entitled to a grant of asylum or humanitarian protection, and did not accept that Articles 2 or 3 of the 1950 Convention would be breached.

25. In relation to Article 8, the Respondent contended that the Appellants could not satisfy either Appendix FM or paragraph 276ADE of the Immigration Rules, and took the view that removal would not breach Article 8.

The Hearing

Preliminary Issues

26. Both Z and K attended the hearing. I was told that they would be giving oral evidence and would not need the assistance of an interpreter.

27. I ascertained that I had received all documentation upon which the parties intended to rely, and that each party had served the other with any documentation upon which reliance was to be placed. I had received Respondent's bundles with Annexes A–F for both Appellants. I had received four separate bundles served on behalf of the Appellants. Bundle A related to the first Appellant and comprised 80 pages, bundle B related to the second Appellant and comprised 71 pages, bundle C related to both Appellants and comprised 24 pages, and bundle D also related to both Appellants and comprised 61 pages.

28. Ms Patel confirmed that the first Appellant claimed asylum based upon her religion as a Christian, while the second Appellant claimed asylum based upon her religion as a Muslim, and her race and ethnicity as being a child of a non-Nigerian father.

29. In the alternative the Appellants claimed humanitarian protection, and relied upon Articles 2, 3 and 8 of the 1950 Convention.

30. Ms Patel stated that it was accepted that the Appellants could not satisfy the requirements of Appendix FM in relation to family life, but relied upon paragraph 276ADE(vi) in relation to private life, and also relied upon Article 8 outside the Immigration Rules.

31. Both representatives indicated that they were ready to proceed and there was no application for an adjournment.

Oral Evidence

32. I firstly heard evidence from Z who adopted his witness statements dated 25th April 2014, 29th April 2014, and 17th April 2015.

33. I then heard evidence from K who adopted her witness statements dated 25th April 2014, 29th April 2014, and 17th April 2015.

34. Both witnesses were questioned by the representatives. I have recorded all questions and answers in my Record of Proceedings and it is not necessary to reiterate them here.

35. In brief summary, Z confirmed that he took F to the mosque with him every Friday for prayers and that she was being brought up as a Muslim. He had no difficulty with his wife and stepdaughter being Christians. Z denied when cross-examined that he had recently started attending prayers at the mosque, stating that he had always attended. Z stated that he feared that his daughters would not be able to practise their religion in Nigeria and that he could not live in Nigeria as he did not

have any relatives there, and had never lived in that country. When asked who he feared in Nigeria he replied "people around there".

36. In relation to his daughter from another relationship Z acknowledged that he did not have any contact with her, stating that her mother would not allow this, and he was unable to afford to instruct solicitors to apply for contact proceedings and could not obtain legal aid. Z accepted when cross-examined that he had been having a relationship with another partner at about the time that K was due to give birth to their child.

37. By way of clarification I asked how long Z had been attending the mosque, and he said it was more than a year although he could not remember the name of the mosque.

38. K, in summary, said that she was bringing up T as a Christian and they prayed every morning and went to church on Sunday. She believed it would be very difficult for her children to practise their religion in Nigeria. When cross-examined and asked why this was the case, she said it would be difficult because Christians and Muslims do not live together in Nigeria.

39. I noted that in her initial witness statement K had indicated that she intended to convert to Islam and I asked if this was still the case, and she said it was not.

The Respondent's Submissions

40. Mr Harrison relied upon the reasons for refusal letters dated 11th February 2014 in submitting that the appeals should be dismissed. I was asked to find that there would be no risk to the Appellants if they returned to Nigeria and that they could live safely in an area of Nigeria other than the north. For example, they could live in very large cities such as Lagos or Abuja.

41. Mr Harrison submitted that Z could obtain entry to Nigeria as the spouse of a Nigerian citizen if he wished.

42. Mr Harrison submitted that the objective and background evidence did not identify a specific risk of persecution for children of mixed faith marriages. I was asked to note that the background evidence indicated that approximately 50% of the Nigerian population are Muslim, and approximately 40% Christian. Nigerians are legally entitled to religious freedom.

43. It was accepted that the background evidence indicated that some states in Nigeria had adopted laws which were discriminatory in some ways towards non-indigenes, but that did not amount to persecution.

44. Mr Harrison submitted that these appeals were a further attempt to frustrate immigration law and prevent the removal of this family who had no right to be in the United Kingdom and who had no valid claim to international protection.

The Appellants' Submissions

45. Ms Patel relied upon the skeleton arguments contained in bundles A and B. I was asked to accept as credible the evidence given by both witnesses. I was also asked to accept that the Appellants are being brought up in different religions, and the second Appellant is of mixed race and would be at risk on that basis.

46. I was referred to background material and in particular bundle B, pages 18-20, 22, 23, 25, 26, 28, 33, 44 and 45. I was asked to find that this background material indicated that the second Appellant would be at risk because she is a non-indigene and the Appellants would be at risk because they are of different religions, and would be at risk from Boko Haram.

47. I observed that the background evidence in relation to Boko Haram appeared to relate in the main to the northern part of Nigeria, and Ms Patel accepted that she could not refer me to background evidence showing a real risk in either Lagos or Abuja.

48. In relation to Article 8 Ms Patel submitted that the Appellants would face very significant obstacles if they were removed to Nigeria and therefore the appeals were entitled to succeed with reference to paragraph 276ADE(vi).

49. I was also asked to allow the appeal in relation to Article 8 outside the Immigration Rules and take into account that removing the Appellants would separate the family, as the Respondent could not remove Z to Nigeria and therefore the decision would be disproportionate.

50. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

51. I have taken into account all the evidence and submissions, both oral and documentary, placed before me, even if I do not specifically refer to a particular piece of evidence. I take into account the lower standard of proof that applies in a case such as this which can be described as a reasonable degree of likelihood. I have considered this appeal in the light of the provisions of paragraph 339L of the Immigration Rules, and have considered the evidence in the round and with anxious scrutiny. I accept that great care must be taken before making adverse findings of credibility in asylum cases.

52. I do not accept Z and K as credible witnesses in all respects. I note what was said about K's credibility in the determination promulgated following her appeal hearing on 12th May 2011. K is described in paragraph 11.1 of that decision as being a person who is willing to deceive the authorities in order to achieve her own ends, and in paragraph 11.2, she is described as not being a witness of truth in respect of the factual basis upon which she seeks to rely. The core of her account is described as a fabrication designed to gain her the right to remain in the United Kingdom.

53. In relation to Z, his evidence is that he is a devout Muslim, but he accepted having entered into a sexual relationship with K prior to marriage as the second Appellant was born in October 2011, and Z and K did not marry until 29th January 2013. Z also accepted having a relationship with another woman, to whom he was not married, at approximately the same time as K was due to give birth.

54. Although Z claimed to attend his local mosque every Friday and to have done so in excess of one year, he was unable to recall the name of the mosque.

55. I accept that Z is a citizen of Pakistan and K a citizen of Nigeria and that both children are Nigerian citizens.

56. I also accept that Z has another daughter currently in the United Kingdom who was born on 9th August 2012 but that he has no contact with her, and he is not pursuing any legal proceedings in order to obtain contact.

57. I accept that Z and K are married and that they live together with the two Appellants in a family unit. They have decided to bring up one child as a Christian and one as a Muslim, although I find that no reasonable or adequate explanation has been given for this, particularly as K was, according to her initial witness statement dated 25th April 2014, intending to convert to Islam. She has subsequently confirmed that she no longer plans to convert, and that she has a strong Christian faith. In my view it is not necessary to consider why a decision has been made to bring up two very young children in different faiths, and it is sufficient for the purposes of these appeals, to accept that this is being done.

58. I firstly consider whether the Appellants would be at risk from Boko Haram which is an Islamist militant group waging a campaign of violence in northeastern Nigeria. Background evidence contained within the Appellants' bundles contains numerous articles relating to acts of violence carried out by Boko Haram. The vast majority of the violent acts take place in the north of Nigeria although there are some acts of violence in other areas of the country. For example, page 45 of bundle A contains an account of an explosion at a bus station in Abuja in April 2014 which killed 71 people, and which had the hallmarks of Boko Haram.

59. I do not find that the background evidence proves that there is a reasonable degree of likelihood that the Appellants would be at risk from Boko Haram if returned to Nigeria. It is not suggested that they would live in the northeastern part of Nigeria. The Appellants' mother was born in Lagos and lived in Lagos. If the Appellants lived in a part of Nigeria other than the northeast, I do not find that there is a risk that they would be targeted by Boko Haram. It would not be unduly harsh for the Appellants to live in Nigeria, in an area other that than the northeast.

60. I next consider whether the Appellants would be at risk because of their religion. I find that the background evidence indicates that approximately 50% of the Nigerian population are Muslim, and that Christians amount to between 40% and 45%. The Respondent has produced the Country of Origin Information response in answer to

the questions as to whether there are reports of people of mixed race or mixed religion marriages being targeted for violence or discrimination in Nigeria.

61. The response refers to a UN Commission on Human Rights Report which is of some age, dated 7th October 2005, which confirms that many families in Nigeria include members from both the Muslim and Christian communities as a result of interfaith marriages. The report at page 16 indicates that Article 38 of the Nigerian Constitution expressly provides for the right to change religion or belief, and that as a fact, in many places in Nigeria Christians and Muslims mix to a great extent and interfaith marriages are very common.

62. I have considered all of the background evidence to which I was referred by Ms Patel, and I do not find that any of that evidence proves to a reasonable degree of likelihood, that the Appellants would be at risk because one parent is a non-Nigerian, and a Muslim, whereas the other parent is a Christian and Nigerian citizen. This would only be apparent of course, if Z decided to leave the United Kingdom, where he has no status, and to apply to reside in Nigeria with his wife and the Appellants.

63. I was referred by Ms Patel to page 18 of bundle B, which is a report by Roy Chikwem, and in the first paragraph of that report Yorubas, which is the ethnic group of the Appellants' mother, are described as being a mixture of Muslims and Christians.

64. Both Z and K in their oral evidence expressed fear that the Appellants would be at risk because one is a Muslim and the other a Christian, and would be at risk because of the mixed religion and mixed race marriage, but the background evidence produced does not provide evidence to support that fear. I do not find that the Appellants would be at risk by reason of their religion, or the religion of Z and K.

65. Much of the background evidence relates to non-indigene status. The COI response dated 29th November 2014 refers to a Human Rights Watch Report headed 'Government Discrimination Against Non-Indigenes'. This report is contained within the Appellants' bundle B at pages 22-28. It confirms that an indigene of a place is a person who can trace his or her ethnic and genealogical roots back to the community of people who originally settled there. Everyone else, no matter how long they have lived there, will always be a non-indigene. The report by Roy Chikwem at page 19 of the bundle records that the state of Lagos is composed of 65% of non-indigenes, who have contributed to the growth and development of the state.

66. The Human Rights Watch Report has indicated that there may be discrimination against non-indigenes, even though the Nigerian Constitution states that there should be no discrimination. It is recorded that some states refuse to employ non-indigenes in their state civil services, and most of the 36 states deny non-indigenes the right to compete for academic scholarships. In some states non-indigene parents allege that while secondary school fees are technically equal, local officials routinely waive school and exam fees for indigene students while non-indigenes are made to pay.

67. The Human Rights Report at page 23 of the bundle records that state governments generally failed to articulate any objective sets of criteria that should be used by local officials in determining whether a person is an indigene of their community, and Nigerian law contains no clear definition of indigeneity. In my view it is not clear that F would be described as a non-indigene, and even if she was, while the background evidence indicates that there may be some discrimination, it does not amount to persecution. For example, at page 28 the Human Rights Watch Report records that non-indigenes are able to vote in the communities they live in, but often face formidable obstacles including outright intimidation should they seek to participate more directly in local politics. This is an example of discrimination, but not of persecution.

68. I was also referred to an article written by Ebere Onwudiwe headed 'Communal Violence and the Future of Nigeria'. I do not attach weight to this article, as it was published in 2004, and therefore is in my view out of date, and is in any event a general article and does not add anything relevant to the Appellants' case.

69. I was also referred to an article by Aaron Sayne headed 'Rethinking Nigeria's Indigene-Settler Conflicts" at pages 38 to 47. This relates to conflicts between indigenes and settlers. This is a general article and does not relate to either Abuja or Lagos, and refers at page 44 of the bundle to conflicts in Jos, Warri, Kaduna, and Benue. The Appellants could safely live in cities such as Abuja or Lagos, and I do not find that this report indicates that they would be at risk if returned to Nigeria.

70. Having considered all of the background evidence, I do not find any satisfactory evidence that the Appellants would be at risk from Boko Haram, or because they live in a household where there are mixed religions. If F is found to be a non-indigene then she may be subjected to discrimination in some areas of her life, but this discrimination does not reach the threshold of persecution. Being a non-indigene does not entail a risk of physical violence, or treatment that would breach Articles 2 or 3 of the 1950 Convention. If Z accompanied his family to Nigeria then it appears clear that he would be a non-indigene and therefore subjected to some discrimination but not persecution.

71. I do not find that the presence of a non-indigene would cause difficulties for the family, particularly if they lived in one of the large cities such as Abuja or Lagos. K confirmed in her witness statement dated 25th April 2014 that while in Nigeria she was in a relationship with an American man, and after that she had a relationship with a British man. There were no adverse consequences for her due to her relationships with foreign men.

72. The Appellants are not at risk if returned to Nigeria and therefore they are not entitled to a grant of asylum or humanitarian protection, and returning them to Nigeria would not breach Articles 2 or 3 of the 1950 Convention.

73. In considering Article 8 I take into account that it is accepted that the Appellants cannot satisfy the requirements of Appendix FM in relation to family life.

74. I find that the Appellants cannot satisfy paragraph 276ADE in relation to their private lives. They cannot satisfy subsection (vi) because they are under the age of 18. They cannot satisfy subsection (iv) because although they are under the age of 18, they have not lived continuously in the United Kingdom for at least seven years.

75. As I accept that Appendix FM and paragraph 276ADE are not a complete code, it is appropriate for me to consider Article 8 outside the Immigration Rules. I do so taking into account the guidance given in Razgar [2004] UKHL 27 which indicates that the following questions should be considered:

    (a) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
    (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
    (3) If so, is such interference in accordance with the law?
    (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
    (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?

76. The decision in Beoku-Betts [2008] UKHL 39 means that if I find that family life is engaged, I must consider the family lives of all members of the family, not only the Appellants.

77. I find that the Appellants have established family life with Z and K. However, if the Appellants were removed from the United Kingdom they would be removed together with their mother, as she has no right to remain in the United Kingdom. Although Z has no right to remain in this country, because he is a citizen of Pakistan, the Respondent could not remove him to Nigeria. I therefore conclude that removal of the Appellants may be an interference with their family life as well as their private life, and engages Article 8.

78. I find that the proposed interference would be in accordance with the law as the Appellants are not at risk in Nigeria and therefore are not entitled to a grant of asylum or humanitarian protection, and there would be no breach of Articles 2 or 3 of the 1950 Convention. In addition the Appellants cannot satisfy the Immigration Rules in order to remain in the United Kingdom.

79. I then have to decide whether the proposed interference is necessary and proportionate. In considering this issue, the best interests of the children are a primary consideration. As explained in ZH (Tanzania) [2011] UKSC 4, the best interests of a child broadly means the well-being of the child, and a consideration of where those best interests lie will involve asking whether it is reasonable to expect the child to live in another country. The best interests of a child, while a primary consideration, can be outweighed by the cumulative effect of other considerations.

80. In this case the children are not British, but they are Nigerian citizens. Because of their young age, I find that their best interests would be served by remaining with their parents. I have taken into account the principles outlined in Azimi-Moayed [2013] UKUT 00197 (IAC) and set out below paragraph 1 of the head note to that decision:

> (1) The case law of the Upper Tribunal has identified the following principles to assist in the determination of appeals where children are affected by the appealed decisions:
>
> (i) As a starting point it is in the best interests of children to be with both their parents and if both parents are being removed from the United Kingdom then the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary.
> (ii) It is generally in the interests of children to have both stability and continuity of social and educational provision and the benefit of growing up in the cultural norms of the society to which they belong.
> (iii) Lengthy residence in a country other than the state of origin can lead to development of social cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period.
> (iv) Apart from the terms of published policies and rules, the Tribunal notes that seven years from age 4 is likely to be more significant to a child than the first seven years of life. Very young children are focussed on their parents rather than their peers and are adaptable.
> (v) Short periods of residence, particularly ones without leave or the reasonable expectation of leave to enter or remain, while claims are promptly considered, are unlikely to give rise to private life deserving of respect in the absence of exceptional factors. In any event, protection of the economic well-being of society amply justifies removal in such cases.

81. In this case the children are very young and would have no difficulty adapting to life in Nigeria, the country of which they are citizens. I do not find that there would be any language or cultural difficulties, and there are no relevant medical issues.

82. The Appellants have not lived in the United Kingdom for seven years and will be focussed on their parents rather than their peers. The youngest Appellant has not yet started school, and the elder child has only just started her first school.

83. The parents of the children do not have the right to remain in the United Kingdom and in considering proportionality and Article 8, I have to take into account section 117B of the Nationality, Immigration and Asylum Act 2002. This confirms that the maintenance of effective immigration controls is in the public interest. It is also in the public interest that persons seeking to remain in this country can speak English and are financially independent. Little weight should be given to a private life established when a person's immigration status is precarious. The family are not financially independent and their immigration status has always been precarious.

84. The best interests of the children are to remain with both parents if possible, and definitely with their mother. In my view it would be proportionate to remove the Appellants to Nigeria for the reasons that I have outlined above, and their mother would be removed with them. This need not involve a separation of the family as it is open to Z to make an application to accompany his family to Nigeria as the spouse of a Nigerian citizen and the father and stepfather of Nigerian children. Removal of the Appellants would not breach Article 8 of the 1950 Convention.

Notice of Decision

The decision of the First-tier Tribunal is set aside. I substitute a fresh decision as follows.

I dismiss the appeal on asylum grounds.

I dismiss the appeal on humanitarian protection grounds.

I dismiss the appeal on human rights grounds.

I dismiss the appeal under the Immigration Rules.

Anonymity

The First-tier Tribunal made an anonymity order in these proceedings because the Appellants are minors. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No report of these proceedings shall directly or indirectly identify the Appellants. Failure to comply with this direction could lead to a contempt of court.

Signed Date 28th April 2015

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT
FEE AWARD

The appeals are dismissed. There is no fee award.

Signed Date 28th April 2015

Deputy Upper Tribunal Judge M A Hall