Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/14669/2013
IA/14676/2013
IA/14702/2013
IA/14711/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 2 September 2014	**On 12 January 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MRS ANUOLUWAPO ESTHER AGBOOLA (FIRST APPELLANT)
MR OLUGBOYEGA OLAYINKA ONIMOLE (SECOND APPELLANT)
MASTER DAVID DAMILARE ONIMOLE (THIRD APPELLANT)
MASTER SAMUEL AYODEJI ONIMOLE (FOURTH APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss A Hashmi, instructed by Kabir Ahmed & Co Solicitors
For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Nigeria. I shall hereafter refer to the first appellant as the "appellant". She was born on 15 January 1933. The other appellants are her husband (the second appellant) and her children. The

appellant had been a student in the United Kingdom and had sought further leave to remain for herself and her family. She accepts that she and her family cannot succeed under the Immigration Rules and that her appeal before the First-tier Tribunal (Judge Ince) proceeded on Article 8 ECHR grounds only.

2. Granting permission, Judge Robertson wrote:

> Although the judge has made more than passing reference to the other appellants, it is arguable as submitted in the grounds of the application, that he has not made a finding on the best interest of the appellants' children pursuant to the provisions of Section 55 of the Borders, Citizenship and Immigration Act 2009 which would feature in any assessment as to whether or not the appellants' circumstances are compelling for the purpose of the deciding (*sic*) whether the decision will lead to justifiably harsh consequences and in any subsequent proportionality exercise. However, the appellants must raise their hopes too high that the outcome of their appeal would be successful simply because permission has been granted (*sic*).

3. I find that the appeal should be dismissed. I have reached that conclusion for the following reasons.

4. Ground 1 challenges the judge's finding [34] that "I therefore first of all considered whether there will be insurmountable obstacles to the family relocating to Nigeria. I find that there are not". The grounds submit that the judge failed to "prioritise the position of the two children with that of the main appellant's unborn child".

5. I find that the judge had proper regard to the interests of the children in determining this appeal. At [49], the judge noted that "the minor appellants, being so young, would be able to acclimatise to the changed environment [in Nigeria]; there is no suggestion that the education system would not be adequate; and there are no health issues applicable to any appellant". The judge did not refer to Section 55 in terms but that is not in itself an error of law. The judge has, in effect, determined that the best interests of the children would lie in their remaining in the custody of their parents who, he found, could return to Nigeria. I do not accept that the judge has failed to have proper regard to the best interests of the children.

6. The second ground of appeal also has no merit. The judge is criticised for failing to have proper regard to *ZH (Tanzania)* [2011] UKSC 4. The judge noted that "it must not be forgotten that none of the appellants or members of their family are UK citizens". The judge was doing little more than stating a fact. He was also following the *dicta* of the Court of Appeal recently expressed in *EV Philippines* [2014] EWCA Civ 874:

> 1. In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will

be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?

1. On the facts of ZH it was not reasonable to expect the children to follow their mother to Tanzania, not least because the family would be separated and the children would be deprived of the right to grow up in the country of which they were citizens.
1. That is a long way from the facts of our case. In our case none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. If the parents are removed, then it is entirely reasonable to expect the children to go with them. As the immigration judge found it is obviously in their best interests to remain with their parents. Although it is, of course a question of fact for the tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world.

7. Ground 3 criticises the judge for finding that the children would be able to build new private lives in Nigeria. The ground is no more than a disagreement with a finding available to the judge on the evidence. No error of law is disclosed.

8. The judge found that there was nothing extraordinary in the circumstances of the appellants. He noted that the appellants "should have expected [that they would have to leave the United Kingdom] having come here only with temporary leave as students". It does not arguably render the circumstances of the appellants exceptional that they happened to have met and had a family in the United Kingdom whilst living here as students.

9. The fifth ground of appeal criticises the judge for failing to have regard to the appellants' good character whilst living in the United Kingdom in assessing the proportionality of their removal in consequence of the immigration decision. The judge did not arguably err in law by having regard to the alleged good character of the appellants. His Article 8 ECHR analysis was cogent and supported by adequate reasoning.

10. In the circumstances, these appeals are dismissed.

NOTICE OF DECISION

11. These appeals are dismissed.

12. No anonymity direction is made.

Signed Date 19 November 2014

Upper Tribunal Judge Clive Lane