Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number IA/21028/2013
IA/18911/2013
IA/19738/2013
IA/28686/2013
IA/28689/2013

THE IMMIGRATION ACTS

Heard at Field House
On 25 June 2014

Determination promulgated
On 12 June 2015

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Secretary of State for the Home Department

Appellant

and

Olutoyin Hussain + 4[1]
(Anonymity directions not made)

Respondents

Representation
For the Appellant: Ms L Kenny, Home Office Presenting Officer.
For the Respondents: Mr D Eteko of IRAS & Co.

DECISION AND REASONS

1. These linked appeals have come back before me to remake the decisions in the appeals subsequent to an Error of Law hearing where I found that the

[1] The names of the other 4 parties, who are all the children of Ms Olutoyin Hussain, are a matter of record on file.

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decision of First-tier Tribunal Judge Cohen should be set aside for error of law.

2. Although in the heading to these proceedings the Secretary of State is the appellant, and the Hussains are the respondents, I shall continue, as in the 'Error of Law' decision, to refer to the Hussains as the Appellants and the Secretary of State as the Respondent.

3. I have set out below as an Appendix the text of the 'Error of Law' decision, and this should be read as an integral part of this Decision. Something of the background to these appeals is set out at paragraphs 4-5 and 9-10, and the issues then considered likely particularly important to resolution of the case are also identified – with appropriate Directions being given accordingly.

4. In response to the Directions both the Appellants and the Respondent have filed Skeleton Arguments: I am grateful for the assistance those documents have provided. In terms of evidence, the Appellants have filed further documents by way of three bundles, including witness statements, documents relating to schooling, a social work report / impact assessment, bank statements, and background / country information. I have also been provided with the Respondent's Operational Guidance Note for Nigeria (v10.0, December 2013). Neither party has filed any expert evidence in respect of the family law system in Nigeria. The Appellants, however, have provided extracts from a text book 'Family Law in Nigeria', by Professor E I Nwogugu, HEBN Publishers, 3rd edition, (Indexed Bundle (3), pages 17-44). Mr Eteko indicated at the commencement of the hearing that it was acknowledged that there was a family law system in place in Nigeria, but stated that it was the Appellants' case that it was subject to influence and corruption.

5. I heard evidence at length from Ms Olutoyin Hussain (the First Appellant), and also from Mr Akin Soroye (the Senior Pastor of the Redeemed Christian Church of God), Ms Opeyemi Hussain (the Fourth Appellant), and Mr Adetokunbo Hussain (the Fifth Appellant). Following a short lunch adjournment I then heard submissions from the representatives to supplement the written submissions already provided by way of the Skeleton Arguments. I have kept a note of the evidence and submissions in my record of proceedings, which is on file. I have had regard to everything that was said at the hearing in reaching my decision. (Although a substantial passage of time has elapsed since the hearing, my notes are such that I have been able to remind myself adequately of the issues and evidence, and I in any event retain a recollection of the proceedings; further I made a number of relevant notes shortly after the hearing. In all of the circumstances I am satisfied that the delay in

finalising the decision herein has not impacted upon my recollection of the issues, the evidence, or the submissions.)

Consideration

The Parties' respective cases

6. The Appellants' case is pleaded in the Skeleton Argument essentially in these terms:

   (i) It is accepted that the Appellants cannot succeed under the Immigration Rules (paragraph 1).

   (ii) It is also accepted that the family life component of Article 8 "*is unarguable as the Appellants if removed will leave as a family*": accordingly reliance is placed on private life "*in terms of their education, their employment, social ties and effort of integration in the UK*" (paragraph 4). (See further below my own observations qualifying the position in this regard.)

   (iii) The Appellants are Christians who have a freedom to practice their religion in the UK, which, it is claimed, they would not enjoy in Nigeria because of the restrictions imposed by the First Appellant's husband, who is also the father of the other Appellants, who is a Muslim. He is characterised as abusive and controlling; it is submitted that the family "*are likely to return to their father's house and family and in a dominated Muslim area*", and that there is a "*potential social dependency on their father*". (Paragraphs 2, 5, and 6.)

   (iv) It is submitted that relocation to a Christian area "*cannot be contemplated*" because of the current security situation (paragraph 7).

   (v) It is submitted that the First Appellant is likely to have difficulties securing the custody of her children because of her husband's influence and a corrupt and ineffective judicial system (paragraph 6).

   (vi) The Second, Third, Fourth, and Fifth Appellants have progressed well in their education and have established strong ties; they "*have barely remained in Nigeria and now consider UK as home*"; they would encountered difficulties adapting or adapting to life in Nigeria (paragraph 8).

   (vii) The public interest would not be served by the removal of the Appellants: the First Appellant is a taxpayer; the other Appellants have been described as assets to the UK by the First-tier Tribunal Judge (paragraph 10).

7. In oral submissions Mr Eteko essentially followed the scheme of his Skeleton Argument: as there (per paragraphs 2 and 3), he sought to

portray the family as one that had 'beaten the odds' against a background of abuse, having become strong students and that this was testimony to the efforts of the First Appellant – and that such matters merited favourable consideration outside the Rules.

8. In contrast the Respondent rejects the Appellant's case that their religious freedoms will be compromised, observing that the right to religious freedom and expression is enshrined in the constitution of Nigeria, and relying on the OGN at paragraphs 3.19 – 3.19.13, submitting that in practice there is no state oppression on religious grounds. Even if there were a particular difficulty arising from the First Appellant's husband (the father of the other Appellants), the Respondent suggests internal relocation is a viable option. The Respondent also rejects any suggestion that the family would be exposed to a life of poverty, observing "*the family have lived in United Kingdom by means of independent means. The appellant and her children have studied and completed University education. The college fees, living expenses, accommodation costs must have amounted to many tens of thousands of pounds*" (paragraph 5).

9. In oral submissions Ms Kenny on behalf of the Respondent invited me to consider that the First Appellant had not been full and frank in respect of the family's financial circumstances. Nor, it was submitted, had it been demonstrated that there was any genuine adverse interest on the part of the father such as to put any of the Appellants at risk. So far as the possibility of there being family proceedings in Nigeria, it was argued that not enough evidence had been presented to demonstrate corruption in the Family courts.

<u>The Appellants' histories</u>

10. In the Error of Law decision I observed that it might not be necessary for a complete rehearing of all of the evidence: in particular it appeared that the First-tier Tribunal Judge's conclusions in respect of the progress that the Appellants had made in their education in the UK were entirely sustainable and should stand. The Respondent has not sort to go behind those findings or otherwise re-open them Accordingly, I proceed on the basis that they are intact. The relevant passage in the decision of the First-tier Tribunal is at paragraph 19:

> "The appellants have excelled in their education in the UK. They are an asset to this country. They have gained various awards and positions in all schools, colleges and universities that they have attended. They have undertaken extracurricular activities and undertaken voluntary and charitable work."

11. In the Error of Law decision I also observed that the chronology of the family's residences was unclear, and that there was "*at the very least a hint*

of an affluent and mobile family", adding that "*affluence and mobility may be relevant in considering the impact of relocation after a period of living in the UK*". In response to consequent Directions I have been provided both with a general Chronology and a break-down of the educational history of each of the First Appellant's children.

12. The First Appellant's husband, Mr Alhassan Abubakar Hussain, is a Nigerian diplomat. He has been posted to different countries during the period of the marriage, as well as working for substantial periods in Nigeria: he was posted in Poland from February 1993 until December 1997, and Equatorial Guinea from February 2007. More recently, and since the Appellants have been in the UK, he has been posted to the Republic of Niger – the First Appellant thought from about late 2012. For the main part the family have accompanied him when abroad, save that at different times the children have been in schools away from the family home. I note in particular the following matters from the chronologies.

16 FEB 1991: Marriage.

FEB 1993: Posting to Poland – until December 1997. First and Fourth Appellants moved to Poland, (Fourth Appellant c22 months old).

Fifth Appellant born in Poland (17/3/1993).

SEP 1997: First Appellant travelled to USA; her two children remained in Poland. The First Appellant was to remain in the USA until October 1998.

13 NOV 1997: Second Appellant born in USA[2].

DEC 1997: Fourth and Fifth Appellants return to Nigeria from Poland with their father.

Fifth Appellant commences boarding school in Minna, Niger State, Nigeria.

OCT 1998: First and Second Appellants return to Nigeria from USA.

Minna becomes the family home for the First Appellant and her children – although her husband was primarily working in Abuja "visiting and assisting financially as he could". Fourth and Fifth Appellants in education in Minna.

16 JUN 2005: Third Appellant born.

[2] Although the Second Appellant was described as a citizen of Nigeria in the decision of the First-tier Tribunal (paragraph 1), he is an American citizen and holds a US passport.

FEB 2007: Diplomatic posting to Equatorial Guinea. First, Second, Third, and Fifth Appellants travel to Equatorial Guinea; Fourth Appellant continues at boarding school in Nigeria until April 2007.

MAY 2007: Fifth Appellant goes to boarding school in Cameroon for two months before returning to Equatorial Guinea. Second Appellant commences schooling in Equatorial Guinea.

SEP 2007: Fourth Appellant joins family in Equatorial Guinea having completed secondary education in Nigeria in June 2007.

NOV 2007: First, Second, and Fifth Appellants leave Equatorial Guinea for the UK. (Second Appellant 10 years old; Fifth Appellant 14 years old). Third and Fourth Appellants remain in Equatorial Guinea with their father and a nanny. (Fourth Appellant 16 years old, Third Appellant 2 years old.)

APR 2009: Fourth Appellant joins mother and siblings in UK.

Third Appellant visits family in UK accompanied by father; returns with father to Equatorial Guinea after 2 weeks.

SEP 2009: Third Appellant joins mother and siblings in UK.

13. As regards immigration status, I note that the First Appellant's passport shows her to be the holder of a student visa issued in Abuja, and bears an entry stamp showing her to have used this visa to enter the UK on 1 February 2008. (There is a corresponding exit stamp of the same date from the Nnamadi Azikwe International Airport, Nigeria). This shows that the First Appellant having come to the UK in November 2007 with two of her children, at some point departed for Nigeria before returning – and it would appear likely that she did so accompanied by the Second Appellant (see below). Whilst the Chronology provided on behalf of the Appellants omits this detail – this does not in any way invalidate the remainder of the Chronology. It is not disputed that the First Appellant was granted subsequent periods of leave as a student, the most recent being valid until 7 April 2013.

14. Of the other Appellants, consistent with the Chronology: the Respondent acknowledges in the refusal letter that the Fifth Appellant entered as a visitor on 29 November 2007; the Second Appellant's passport shows a 6 month visitor entry stamp for 29 November 2007; the Respondent acknowledges in the refusal letter that the Fourth Appellant entered as a child dependent of a Tier 4 (General) Student migrant on 6 April 2008; and the Third Appellant's passport shows entry stamps to the UK on 3 April

2009 and 14 September 2009, pursuant to a 'visa student dependant' endorsement. The Second Appellant's passport also contains a student dependent entry clearance visa issued in Abuja with the same validity as his mother's: this is also endorsed with an immigration officer's entry stamp, but on the photocopy on file the date is not legible.

15. It appears to be common ground that since entry each of the First Appellant's children were in due course granted extensions of leave to remain as dependants until 7 April 2013 – i.e. 'in-line' with their mother.

16. The application of 22 March 2013 for leave to remain was, accordingly, made at a time when all of the Appellants had valid leave.

17. In all of the circumstances it is to be noted that there is nothing adverse in the Appellants' respective immigration histories.

18. In respect of schooling I note the following (ordering the children by seniority):

    (i) Fourth Appellant, Opeyemi (d.o.b. 21/5/1991): 2 years from the age of 4 at the British School of Warsaw; thereafter from February 1998 until June 2007 educated in Nigeria; from September 2008 to June 2010, Sixth Form College in London; from September 2011, Queen Mary College, University of London.

    (ii) Fifth Appellant, Adetokunbo (d.o.b. 17/3/1993): 1 school year from the age of 3 at the British School of Warsaw; thereafter from February 1998 until April 2007 educated in Nigeria, followed by 2 months in Cameroon; from December 2007 2 June 2009, secondary school in London; from September 2009 to June 2011, Sixth Form College in London; from September 2011, Oxford Brookes University.

    (iii) Second Appellant, Timmy, (d.o.b. 13/11/1997): from September 2002 to January 2007, school in Nigeria; from February 2007 to October 2008, Nigeria Consulate International School in Equatorial Guinea; from July 2008 junior then secondary school in UK.

    (iv) Third Appellant, Bolu, (d.o.b. 16/6/2005): from February 2007 to June 2009 Nigeria Consulate International School in Equatorial Guinea; from September 2009 school in UK.

Allegations of domestic abuse / oppressive behaviour

19. It is asserted that the Appellants' histories have included abusive behaviour on the part of the First Appellant's husband, the father of the other Appellants. This is referred to in the covering letter to the Appellant's' applications dated 21 March 2013 (Respondent's bundle), and

in more detail in the First Appellant's accompanying witness statement dated 18 March 2013 (Respondent's bundle).

20. I do not accept the account in this regard. I considered the evidence of the First Appellant in particular to be generally unreliable. I find that the Appellants have not satisfied me on a balance of probabilities that the conduct of their father either historically or presently was/is as described.

21. The information provided by the Appellants prior to the proceedings before the Upper Tribunal was in many respects incomplete – and prompted the Directions issued at the Error of Law decision. The information now provided, in my judgement, demonstrates circumstances that are broadly incompatible with the allegations made against the father.

22. In reaching my conclusions in this regard I note in particular the following matters:

    (i) The First Appellant's witness statement dated 18 March 2013, submitted with the applications, reveals nothing of – and indeed in my judgement overtly obscures – the family history as now related. The history is summarised this way at paragraph 4 of the statement: "*I met and got married to Mr Alhassan Abubakar Hussain on the 16th Feb, 1991 at the civil registry in Lagos before taking me down to the Northern part of Nigeria where he comes from. <u>There I lived among his family with my children while he lived in another town until I came to United Kingdom</u> for my safety and safety of my children*" (my emphasis). The following paragraph setting out purported detail of the family difficulties and religious oppression make no reference to the relocation to Poland after two years of marriage for approximately 4 ½ years, or the year spent in the USA, or the families relocation to Equatorial Guinea. Indeed after describing the supposed difficulties and oppressive environment the narrative flow proceeds to give an account of a failed attempt by the First Appellant to relocate her family to Lagos (paragraphs 21-23), before referring to some assistance from an old friend based in the UK (paragraph 24) which segues into life in the UK (paragraph 25 onwards).

    (ii) Indeed it is stated (paragraph 9 of the statement) that the reason for enforcing the First Appellant and the children to stay in Minna, Nigeria was to do with the children's education "*because the children were of school-age and he could not afford Abuja school fees*". Whilst it is the case that three of the four Appellants attended school in Minna, the statement disregards periods of schooling elsewhere, including in Warsaw, Kaduna, Cameroon, and Equatorial Guinea.

    (iii) I find that the initial witness statement deliberately conceals significant and important details that demonstrate that the family for

the main part remained together when the father was posted abroad. I find that this undermines the notion that the mother and children were in some way neglected, or otherwise made to live in Minna as a way of oppressing and controlling them or otherwise limiting their freedoms. Further, such emotion is significantly undermined by the fact that as soon as he was posted again outside Nigeria, to Equatorial Guinea, Mr Hussain relocated his family to be with him at his posting: if he had no particular interest in his family, or wished to oppress and control them in a State where sharia law was prevalent, he could have left them in Minna.

(iv) This initial witness statement also obscures the fact that the father has continued to provide the family with a degree of financial support: see further below. Necessarily such a notion – and as I explain in due course my finding that the father has at the very least acquiesced in, and seemingly actively supported, the family's relocation to the UK - is not reconcilable with the claim that he is oppressive and controlling.

(v) I find that the First Appellant's witness statement was deliberately couched in terms that obscured aspects of the family's history that were not readily reconcilable with the claims made about the conduct of the father. Necessarily such a finding is an adverse factor in the overall credibility and reliability of the evidence of the First Appellant.

(vi) It was also pleaded in the supporting letter of 21 March 2013 that the First Appellant "*had to escape from the matrimonial home for safety and those of her children*" (paragraph 5). Such dramatic language – 'escape' – is difficult to reconcile with the manner in which the family arrived in the UK over a period of almost 2 years from November 2007 until September 2009, two of the children initially remaining in Equatorial Guinea, then the Third Appellant visiting for two weeks with his father before returning to Equatorial Guinea for approximately five months and then again coming to join the First Appellant and his siblings in the UK in September 2009. I also find that I am not able to reconcile paragraphs 6-8 of the letter describing threats from the husband's family for "*failing to convert to Islamic faith*" which "*has therefore made it impossible for the family to live together as a family unit*", with the present description of the circumstances of the family being together in Equatorial Guinea prior to the gradual influx of the family members to the UK.

(vii) Whilst I note that the First Appellant in her oral evidence before me gave an account broadly in line with the more expansive narrative presented consequent to the Directions, I am not persuaded that such consistency is in and of itself a reliable indicator of her credibility in

the particular circumstances of this case. Necessarily those circumstances include having failed to give anything approaching a full and frank account at the earlier stages of the application and appeal. Ultimately I find that the First Appellant has woven a false and/or exaggerated narrative around actual facts in seeking to suggest that she and her family may be at risk from her husband / their father.

(viii) I do accept that the First Appellant's husband is a Muslim. I also accept that one of the schools attended by three of the chidren – the El-Amin school (both primary and secondary) - is a Muslim school. There is a photograph at page 109 of Indexed Bundle (2) showing the Fifth Appellant with his father at a gathering in traditional Muslim robes. I also accept that the New Horizons College which the Fifth Appellant attended for 2 academic years 2003/2005 is an Islamic school: the admission letter carries an Islamic greeting (page 91).

(ix) However I do not consider this circumstance is demonstrative of Mr Hussain being a hard-line Muslim or extremist. In this context it is to be noted that in the first instance he was content to marry the First Appellant who at all material times has followed the Christian faith.

(x) Moreover I note that when the Fifth Appellant went to school in Cameroon (following the posting to Equatorial Guinea, where the main language is Spanish) it was to a Christian school – St Joseph's College. This is particularly significant because this period of schooling immediately preceded the time when the First, Second, and Fifth Appellants relocated to the UK. In my judgement it demonstrates that in the most recent period when the family were together with the *pater familias* he was not acting in a way to enforce an Islamic education upon his eldest son.

(xi) Whilst I note that the Fourth Appellant also attended the El-Amin school up until 2004, thereafter she attended the Danbo International School. I have been shown no supporting evidence to demonstrate that this was an Islamic school.

(xii) The children have been educated at a variety of institutions. I find that it is more likely than not that the parents selected the institutions on the basis of a combination of convenience by reference to location and quality of education offered. I do not accept that there has ever been an element of religious control as a motivation for selection of institution. I reject the claims and evidence of each of the First, Fourth and Fifth Appellants in this regard.

(xiii) Further to this, in my judgement it is significant that the relocation to the UK of the Fifth Appellant in 2007 followed hard upon the realisation that the infrastructure of St Joseph's College was poor.

The Fifth Appellant was sent to this school because the family had relocated to Equatorial Guinea in consequence of the father's posting, but there were no suitable schools in Equatorial Guinea where the main language is not English. Accordingly the Fifth Appellant was sent to a school in neighbouring Cameroon. It is said that this school was unsuitable: see First Appellant's witness statement before the Upper Tribunal (Indexed Bundle (2), page 10 - "*he could only spend five weeks in the school because of the poor infrastructure and deplorable condition of the school*"). In the event the Fifth Appellant only attended St Josephs between May 2007 and July 2007. The First, Second and Fifth Appellants entered the UK in November 2007. Significantly the following is stated in the First Appellant's witness statement before the Upper Tribunal: "*we arrived in the UK… with the hope of leaving [the Fifth Appellant] with [a family friend] but this changed as [he] got admission in London and started school immediately*" (page 10). Once the Fifth Appellant had a school place in the UK, the First Appellant made the arrangements to put herself in a position to apply for a student visa, and returned to Nigeria to obtain the appropriate entry clearance. Bearing in mind that her husband is a diplomat and supposedly well-connected - and the First Appellant acknowledges that she was in contact with diplomatic staff in London at this time - I do not consider that any of this could have been done without Mr Hussain's knowledge and consent. If he was indeed controlling and oppressive I do not accept that the First Appellant would have taken any such actions in relocating herself and two of her children, whilst yet two of the children remained with her husband in Equatorial Guinea: any unauthorised precipitate action on the part of the First Appellant might have put in jeopardy her ability to remain close to her other children. Nothing of the sort happened: and indeed in due course the other children were brought to her in the UK – and indeed her husband visited the family here. I do not accept that this was in an atmosphere of tension and threat and on the basis of reluctance on the part of Mr Hussain.

(xiv) I find that the family relocated to the UK primarily to secure educational opportunities for the children, and did so with the full knowledge and consent of Mr Hussain.

(xv) This conclusion is both informed by, and reinforced by, the fact that Mr Hussain has continued to provide financial support to the family: see further below.

(xvi) It is also to be noted that at earlier times the Appellants have travelled freely in Europe and the USA. I am not readily able to reconcile such a circumstance with the notion of Mr Hussain wishing to restrict exposure to 'Western ways' and non-Islamic culture. This,

and the children's attendance at 'international' schools in my judgement indicates a family with a broad international outlook, and I detect nothing in the independent aspects of the history that demonstrates the claims of oppression and control made in particular by the First Appellant.

23. In consequence of the above analysis I find the testimony of the First Appellant in particular to be so unreliable that it engenders significant doubts as to whether or not her relationship with her husband has actually broken down at all. However, even if I were to accept that it has done so, I do not accept that this arises because of any significant religious differences; moreover I do not accept that the consequence of any marital breakdown is such as to put any of the Appellants at risk either generally, or more particularly if they were to return to Nigeria.

24. In so far as the Fourth and Fifth Appellants have also expressed concerns over the conduct of their father in their respective witness statements and oral evidence, I note that they have not been as expansive as their mother. In all the circumstances of the case I find that it is more likely than not that they have in a careful and measured way attempted to support the testimony of their mother – which it is to be noted is in their own interests in seeking to resist removal and remain in the UK. I find, with some regret, that they have misguidedly been prepared to 'go along' with the narrative created by their mother. For the avoidance of doubt I do not accept their evidence in so far as it relates to the oppressive behaviour of, and any possible risk from, their father.

25. Further, it is of significance that at the very least Mr Hussain has acquiesced in the fact that his wife and children are in the UK. Whilst the First Appellant has expressed a concern that she could not be protected in respect of her family relationship with her children in the courts in Nigeria, it is to be noted that Mr Hussain has not taken any action in the courts in Nigeria or otherwise to assert any supposed rights he may have in respect of his children. This is not withstanding the very considerable length of time the Appellants have been in the UK, his own visits to the UK in April 2009 and February 2010, and the supposed circumstance of him being well-connected and powerful. In this latter regard it is not contested by the Respondent that Mr Hussain is a career diplomat: in my judgement if he had been at all concerned to resist the Appellants' presence in the UK he would have had no difficulty in seeking to put pressure on them by way of instituting legal proceedings in either or both Nigeria and the UK, and/or by restricting the level of financial support, and/or through diplomatic channels. In so far as the First Appellant has asserted that she is entitled to an income as the wife of a diplomat on the face of it were he to divorce her such an entitlement would likely be

reduced or completely negated. Beyond oral testimony, there is no independent supporting evidence of any steps that Mr Hussain may have taken to demonstrate his disapproval of the Appellant's presence in the UK.

26. Indeed, when the First Appellant was asked directly in cross-examination what Mr Hussain had done to get her back from the UK she gave what was in my judgement a long, unfocused, and evasive answer - in the course of which she actually acknowledged "*I didn't keep the kids here without his permission*". The question had to be put to her again, twice. Her ultimate answer was that it was by way of financial pressure. I am not satisfied that the Appellants have demonstrated any such financial pressure being brought to bear on them by Mr Hussain: see further below.

Family Law System in Nigeria

27. In light of my findings above, it is not strictly necessary to consider at any length the effectiveness of the family law system in Nigeria in protecting the rights of the Appellants. I am not persuaded on a balance of probabilities that Mr Hussain is intent upon divorcing the First Appellant and/or seeking custody of his children: all the evidence indicates that he is perfectly content for his children to live with their mother, and indeed to do so in the UK. I am not satisfied that were the family to return to Nigeria Mr Hussain would be motivated to separate those children that are still minors from their mother.

28. Be that as it may, for completeness I make the following observations.

29. In my judgement, subject to countervailing factors, as a general proposition where there is a dispute between parents involving the custody and/or welfare of a child, the best interests of the child will be served by the dispute been resolved through due process in the country of that child's domicile or nationality, or the country of domicile or nationality of his/her parents. The principle of comity of laws is such that the United Kingdom should generally defer to other countries legal concept of welfare and best interests: this is the more so in the context of an immigration case where welfare is not paramount – albeit a primary consideration. This general proposition may not apply if there is compelling evidence that there is no child welfare system or procedure for settling disputes, or where the evidence indicates that such a system is applied in a way that is incompatible with international standards of child protection, or more particularly would constitute a flagrant breach of either or both a child's or parent's Article 8 rights.

30. As indicated above it is accepted on behalf of the Appellants that there is a family law system in place in Nigeria. The extracts from the textbook with which I have been provided indicate that there is a paramountcy principle comparable with that in the courts of England and Wales: e.g. see extracts from page 263 of the textbook (Indexed Bundle (3), page 19). Indeed the textbook identifies a sophisticated system with many similarities to that which operates in the UK, and principles that are supported by citations from the case law of England and Wales.

31. In my judgement, in terms of protection issues, this is a system that would meet the **Horvath** test.

32. In the chapter on 'Possession and Custody of Children' it is identified that the family court has a power to consult the wishes of a child. Significantly, in the context of the issues raised in this appeal – albeit that I have concluded raised without any real substance – the court has power to make an order in respect of the religion in which a child should be brought up (page 44). I have not been provided with any supplementary evidence as to how this might work in practice, or the frequency of the making of such orders - particularly in the context of children who are of an age where they are able to express their own wishes as to their choice of religion. I acknowledge that this might give rise to complex issues in another case: however, on the facts of this case I am not satisfied on a balance of probabilities that Mr Hussain would seek to use the family courts in Nigeria either to obtain custody of his minor children, or otherwise to enforce them to follow Islam.

33. I also acknowledge that a system of sharia law may now operate in the Niger state of Nigeria. Again in a different case this may lead to complex issues - which might require a consideration of how disputes as to forum (i.e. whether a 'family' issue should be decided in a sharia court or in a state court applying statutory law) are resolved, or indeed any conflict between sharia law and state law are settled. If there were a prospect of sharia law being applied, it would then be necessary to consider to what extent the application of such principles might result in a flagrant breach of any of the Appellants' Article 8 rights. Nothing has been provided to me by way of assistance in respect of these matters, but for the reasons already given I find that it is unnecessary for me to consider them further because I am not satisfied that Mr Hussain will seek to assert any rights of custody over his minor children at all.

34. For the same reason it is unnecessary for me to reach any conclusion as to the extent to which state family courts may be subject to inappropriate influence and corruption, or the likelihood of Mr Hussain seeking to exert any such inappropriate influence over the outcome of any proceedings.

Nonetheless, for completeness I acknowledge that the background country information includes expressions of concern over the efficiencies of courts: in particular whilst the constitution provides for an independent judiciary it is said that the system is susceptible to pressure from the executive and legislative branches, as well as the business sector, and that political leaders have influenced the judiciary at state and local levels: e.g. see US State Department Report (Indexed Bundle (3), page 51). These concerns are expressed both in the context of fair trial in criminal proceedings, and in civil law matters. Whether such concerns are likely to be manifest in any particular case may require a careful analysis of the specific facts and circumstances: on the facts as I find them, the issue does not arise.

The Family's Financial Circumstances

35. In the covering letter to the Appellants' applications dated 21 March 2013 (Respondent's bundle) containing representations on their behalf, under the heading 'Financial Strength' it is stated "*Applicant's financial history is self-evident that she has never being in receipt of public funds to fulfil her needs. She has been living on her savings and proceeds from sale of her house in Nigeria to fully support the family with the support from friends and church members*". It is also stated earlier in the letter that the First Appellant "*informs us that she sold her belongings in order to finance her coming to the United Kingdom and cannot return to Nigeria because she has no home to return to*".

36. At the Error of Law hearing, in respect of the family's financial circumstances I issued Directions requiring the filing of:

    "[A] detailed account of their financial circumstances, together with any available supporting evidence. Such an account is to include disclosure of all sources of income, and all bank accounts held by the Appellants (whether individually or collectively), and to include a breakdown of their living expenses in the UK (with supporting evidence of household income and outgoings). Such evidence is to include disclosure of the support received from the Appellants' husband/father, together with evidence of the receipt of payments. Failure to disclose any such information, or any gaps in the disclosed information, in the absence of any adequate explanation may lead to adverse inferences being drawn by the Tribunal."

37. In response I have been provided with extensive bank statements. I have also been provided with a breakdown of the household income and expenditure - although no supporting evidence of such.

38. I have not, however, been provided with a complete set of bank statements. During the course of her oral evidence the First Appellant referred to having savings in an ISA account of about £6000. No statement has been provided for this account.

39. In respect of savings it is to be noted that the First Appellant has been utilising the account of the Third Appellant as a savings account: I was told this was because as a 'Young Savers' account it attracts a better rate of interest than a regular deposit or savings account. Bank statements covering the period 7 December 2012 to 3 April 2014 are to be found at pages 391 – 396 of the Appellant's main bundle. It is clear very considerable sums have passed through this account, it one point reaching a balance in excess of £22,800. I was told that the date of the hearing it had a balance of approximately £4000. Together with the balance stated in respect of the ISA account this amounts to current savings of approximately £10,000.

40. Notwithstanding the family's ability to accrue such savings I was told that the family was in receipt of a monthly income by way of charitable donation from the Redeemed Christian Church of God of £1200. Pastor Soroye states as much in his witness statement (Index Bundle (2), pages 27-28), and gave supporting oral testimony in this regard. There was, however, no supporting documentary evidence of such donations – notwithstanding that the church is accountable to the Charity Commissioners by reason of its charity registration – and because it is said that the payments were made in cash there was no specific deposit or deposits that could be identified in the bank statements to demonstrate the receipt of such funds.

41. Moreover I note that the calculation on the Schedule of Income and Expenditure that has been provided on behalf of the Appellants is out by a factor of £1600 per month: the figures add up to a monthly income of £4892.74, rather than £3292.00 shown.

42. I found Pastor Soroye to be unconvincing as a witness. In my judgement he was wholly unable to explain rationally or with any clarity why he, and/or his Church had decided that it should support the Appellant's financially, or how it had determined that £1200 per month was an appropriate figure. I take as a starting point that on the face of it the family's income exceeds its claimed expenditure even without the additional support from the Church. It would not appear that the family requires charitable assistance to meet its essential living needs. Under cross-examination Pastor Soroye claimed that he had been able to 'pick out' the First Appellant as a person who had faced abuse, and had become "*interested in her*" accordingly; he empathised with the family's position as he had had a 'journey' from Islam to Christianity; when it was discovered that the First Appellant had problems because of her faith it had been decided to make "*a commitment to support her*". Pastor Soroye gave no indication that there had been any attempt to evaluate the financial needs of the family - notwithstanding that he acknowledged that it was

necessary to be "*careful about what money is spent on*" because of the need to report to the Charity Commissioners.

43. If the church is indeed supporting the family to the tune of £1200 per month without making proper enquiry as to their income, and in circumstances where it is not apparent that they need such a level of financial support to supplement the available income which seemingly already more than adequately covers their essential living needs, then that constitutes a dereliction of duty that stretches the bounds of plausibility. Further, it in effect portrays the First Appellant as willing to take money that she does not need from charitable sources. Neither reflects well.

44. Bearing in mind that I do not consider what I have been told about charitable donations through the church to be credible, further bearing in mind that there is at least one bank account in respect of which the Appellants have not provided relevant bank statements, bearing in mind that until Directions were issued the Appellants had been reticent in explaining their financial circumstances, and bearing in mind that the Appellants initially advanced an account that obscured the reality of their histories, I find that even now I have not been given a full and frank disclosure as to the financial circumstances of the Appellants.

45. Further in this context, and generally, I have already made reference above to the circumstance of continuing financial support from Mr Hussain. I note that the First Appellant explained that she was entitled to an income or allowance in her own right by reason of being the wife of a diplomat. However, it is clear that the family continues to receive monies directly from Mr Hussain. I note in particular I pages 348, 361, 379, 380 and 390 of the Appellants' main bundle which show transfers to various of the children from their father in the sums of £5752.52 (5 April 2013), £614.03 (31 May 2013), £6049.10 (19 November 2013), £1185.75 (5 December 2013), and £1185.61 pounds (10 February 2014). I also note that in respect of the Second Appellant there are a number of credits to his bank account which are specified to be "*From Dad*" (Additional Indexed Bundle, pages 24-33). Although I understand the larger sums to be in respect of contributions towards the college fees of the older children, such payments are not, in all the circumstances, reconcilable with the suggestion that Mr Hussain is opposed to the children receiving a Western education and/or their exposure to a non-Islamic culture, or that he is otherwise seeking to control the family to quit the UK through financial pressure.

46. In this context I also note that when the First Appellant referenced receiving monies from her own family through the sale of family lands, such monies were passed through Mr Hussain's account. Such a

circumstance - permitting use of his account as a conduit for financial support from third parties - hardly indicates the level of animosity and control that is at the heart of much of what the First Appellant has had to say about not wishing to return to Nigeria. Moreover, the reference to family lands is not readily reconcilable with the First Appellant's claim to have come from poverty. In my judgement the First Appellant has invented the account of income coming from her family via Mr Hussain to obscure the extent of the continuing financial support from Mr Hussain for his children.

47. I conclude that I have not been told the truth about the families financial circumstances, and that a complete picture has not emerged. In my judgement the primary reason for this is to obscure the level of continuing assistance derived from Mr Hussain because it is inconsistent with the claim that he would put the family at risk if they were to return to Nigeria. Nonetheless, the implication of my conclusion is that the family is indeed self-supporting. In this context I accept that the First Appellant has taken employment in the UK; it is also clear to me that there is a substantial source of income via Mr same; it also seems to me more likely than not that the family has access to other assets which it has chosen to conceal from the Tribunal.

Rejection of claims as to circumstances if returned to Nigeria

48. In light of the foregoing I reject the claims that have been made primarily by the First Appellant in respect of the likely circumstances that the family would encounter if required to return to Nigeria. I do not accept that it has been shown that the family would face any risk on religious or other grounds from Mr Hussain, or from anybody else. I do not accept that Mr Hussain would seek to separate the minor children from their mother. I do not accept that he would bring pressure to bear upon any of the Appellants in respect of their choices as to faith. Nor do I accept that there is such a generalised level of risk to Christians in Nigeria that they would not be able to find somewhere to live and worship if they so chose. In this context I consider that they have the additional insulation of relative prosperity. This is not to negate the fact of religious tensions in Nigeria, or the intensity of those tensions in particular areas; it is to recognise that such tensions are not pervasive to an extent that all parts of Nigeria are unsafe. In so far as the Appellant's bear Muslim names, it appears that the animosity is generally from Muslims towards Christians, and not from Christians towards Muslims: I do not accept it has been shown that if the Appellants were to locate themselves in a Christian area they would face animosity by reason of their names alone: there is no basis to conclude anything other than that it would become readily apparent that those of

the Appellants that wished to pursue their Christian faith were genuine, and they would be accepted as such.

49. Nor do I accept that the Appellants would encounter any financial hardship if returned to Nigeria. I am not satisfied that it has been demonstrated that they would be unable to support themselves, or would be deprived of the continuing support of Mr Hussain – even if it were the case that there is a marital rift.

50. In my judgement the real motivation behind the applications and appeals – and indeed the real motivation in moving to the UK in the first place was the availability of educational opportunities, and secondarily a sound civic infrastructure coupled to wider societal freedoms than are not to be found in Nigeria or the locations of Mr Hussain's postings. Indeed I consider that Mr Hussain has at the very least acquiesced in this matter, and very probably is actively supportive of the children's pursuit of education in the UK - irrespective of whether or not there might be a marital rift. Certainly he has been prepared to continue financial support in respect of those matters of education which the children have not been able to access for free (i.e. tertiary education fees).

Private Life Interference

51. Having rejected those aspects of the Appellants' case based on claims to be at risk if returned to Nigeria, the merits of their appeals now rest only on the extent to which the interference in their private lives if removed in consequence of the Respondent's decisions would be disproportionate when measured against the public interest in particular in maintaining effective immigration control.

52. In this context I have already noted above – albeit indicating a qualification to which I will now refer – that it is accepted that there would be no interference with family life because the Appellants would be removed as a family unit. The possible qualification to this is that it was an inherent part of their case that the family might be broken up in Nigeria by means of Mr Hussain pursuing custody of the children. If the case had been made out that that was genuinely a prospect, and that there would be an absence of protection through the family courts such as to amount to a flagrant breach of Article 8, then there would still have been a 'family life' argument to be run and considered notwithstanding the removal as a family unit. In the event, on my findings, this does not arise.

53. In respect of private life the particular strength of the case lies in the private lives of the two minor children – which I address further below.

54. Before looking at these specifics in more detail, I make the following observations:

(i) Given the length of time that each of the Appellants has been in the UK, it seems to me that there is little controversy in answering the first two **Razgar** questions in their favour.

(ii) There is no apparent issue between the parties in respect of the Third and Fourth **Razgar** questions.

(iii) The real issue in these appeals under Article 8 is in respect of the Fifth **Razgar** question - proportionality.

(iv) I recognise that it is in the public interest that there be a maintenance of effective immigration control, in particular by the consistent and fair application of a published set of Rules, in so far as that is compatible with human rights in any particular case.

(v) It is to be noted that the Appellants have good immigration histories. They have been present in the UK at all material times with appropriate leave, and the applications that form the basis of their appeals were made at a time when they had leave. Whilst the mere observance of the requirements of immigration controls is not in itself a positive feature to which weight should be accorded, it is the case that there is no compelling adverse immigration history that is to be weighed in the balance against the Appellants.

(vi) Nonetheless I recognise and acknowledge that the private lives established pursuant to the grants of successive periods of limited leave to remain, have been established in periods which whilst not unlawful might be said to be 'precarious', in the sense that there was no guarantee of being permitted to remain beyond the periods of leave. However, I doubt very much that this was a matter of express comprehension in the minds of the minor children as they went about forming the usual sort of alliances and friendships of schoolchildren of their age, and pursuing both typical academic and non-academic activities.

(vii) All of the Appellants speak English, and indeed all of the children have reached a high level of educational attainment. Not only is this indicative of an ability to integrate, but there is evidence of actual integration to an extent that the First-tier Tribunal Judge characterised them as assets to the UK.

(viii) As noted above, although I am not satisfied that I have been given a full and frank disclosure of the families financial circumstances, I am satisfied that those circumstances make them financially independent.

(ix) I consider it an adverse feature of the Appellants' cases that the First Appellant has chosen to advance a case that I find to be untruthful in many material respects. Although the adult children – the Fourth and Fifth Appellants - from whom I have heard evidence have to some extent 'gone along' with their mother's invention, given their relative immaturity and the issues that are at stake for them and their younger siblings, I am prepared to see this as more a matter of misguidedness rather than overt and cynical manipulation. I do not take such a charitable view in respect of the First Appellant; however, her failings are not to be visited on her younger children, the Second and Third Appellants.

55. I have been provided with an 'Impact Assessment' report prepared by an Independent Social Worker, Ms Angeline Seymour (Indexed Bundle (2), pages 29-49). I have had regard to this report at all stages in my consideration of this appeal, even though I am only expressly addressing it at this stage of the written Decision. Ms Seymour's qualifications and experience are set out in the report, and she appropriately identifies her duty to the Tribunal. Be that as it may, I found the report to be of limited value in certain respects. It is based on a single meeting with 4 of the Appellants: the Fifth Appellant was not seen by Ms Seymour. It is not clear what documents Ms Seymour had available to her, but what is particularly stark is the omission of any reference to the relationship of any of the children with their father. (There is reference at paragraph 3 to the First Appellant's concerns about whether Mr Hussain would seek to obtain custody of the children and impose Islamic beliefs upon them, but there is no exploration with the children concerning their relationships with their father.) The focus is primarily on the circumstances in the UK, and indeed – though not exclusively - the stress and anxiety engendered by the uncertainty of their status. The concept of uncertainty of status is, of course, a different concept from that of impact of removal and/or return. The report does not in itself give any particular consideration to the circumstances that might be met upon return. Moreover, in not addressing the supposed circumstances of the family history prior to entering the UK, I found the report to be of no value by way of corroboration of past events: this is not necessarily a criticism so much as a statement of fact – the purpose of the report not being primarily to offer corroboration. It is nonetheless surprising to find no reference to the interrelationships between the children and their father, and the absence of any particular consideration to what must surely be a central consideration in any assessment of a child's best interests, in my judgement undermines generally the reliance that may be put on Ms Seymour's expertise.

56. It is also to be noted that to some extent the report is premised on circumstances related to Ms Seymour by the First Appellant, which I have rejected in the context of this appeal.

57. However, I do accept that the report is of value in relating the circumstances of the children, and in particular their progress in education and their social circumstances. I note in particular what is related in respect of the Second Appellant (paragraph 2.03), and the Third Appellant (paragraph 2.01). The report is a matter of record on file and accordingly I do not reproduce its contents further here.

58. Overall, I accept the conclusion that "*it is in the children's best interest that the family remain together*" – and indeed do not understand the Respondent to have ever suggested otherwise. I consider, however, that I cannot attach significant weight to the conclusion that the best interests require remaining in the UK in circumstances where this has been largely premised on the claimed circumstances that the family would face if relocated to Nigeria: Ms Seymour appropriately observes that this is not a matter within her expertise to comment upon, but that the choice to remain in the UK is understandable "*on the basis of the situation as reported to me*". However, the opinion is not limited to this reasoning but is also based on other concerns related to Ms Seymour by reference to the First Appellant's anxiety and possible depression, and otherwise the circumstances of the children in the UK.

59. The fact that I have identified aspects of Ms Seymour's report that tend to undermine the basis of her conclusion, does not mean that the conclusion itself is not the right one. Indeed ultimately I have reached the conclusion that it is in the best interests in particular of the younger two Appellants that they be able to continue to enjoy the private lives they have established in the UK both by reference to their education and their wider social lives. (In so saying I acknowledge that 'best interest' is not determinative of the proportionality balance, but a primary consideration in evaluating the balance.)

60. In this context I am influenced in particular by the following circumstances:

    (i) All of the children have experienced a relatively peripatetic childhood. The period of time spent in the UK constitutes almost the longest period spent in any one location. A further relocation at this stage, even if it is back to their country of origin/heritage (although not necessarily birthplace) would continue this somewhat unsettling and peripatetic lifestyle.

(ii) For the younger two Appellants – and the youngest in particular - the period of time spent in the UK is particularly significant. The Second Appellant was about 10 years old when he entered the UK, and at the date of hearing was over 15; during this time he has transitioned from primary education to secondary education and is embarked upon GCSEs. The Third Appellant was only 4 when he entered the UK and at the date of hearing was approaching his 9th birthday. He had experienced little more than nursery education prior to entering the UK, and is now making progress in a junior school.

(iii) The descriptions of the Second and Third Appellants in the report of Ms Seymour, and the reports from their respective schools portray children who are well settled and embedded – and indeed thriving – in the UK educational system, and who are extensively engaged in extra-curricular activities, as well as having an extensive social life appropriate to their ages. In my judgement both boys are extensively integrated into their local communities, and I have little hesitation in concluding that there would be a considerable interference and disruption to their private life which would more than likely impact upon their ability to adjust to yet a further school and/or educational system if returned to Nigeria: the Second Appellant in particular is at a critical stage in his schooling – having sat one GCSE early and being in the process of studying his other GCSEs. Ms Seymour opines that the changes in attitude recently detected in the children may be attributable to the stress of their situation; in my judgement it is a reasonable inference that being required to relocate to Nigeria would provide an additional stress factor. Whilst it may be the case that in due course the children would adapt – as indeed their siblings have in the past to changes – I do not underestimate the extent of the disruption in the meantime and how this may set them back both emotionally and academically. In the case of the youngest Appellant it is also to be noted that it is plausibly said that he no longer has a command of any of the non-English languages spoken in Nigeria.

(iv) Having regard to what is said in **Azimi-Moayed** **[2013] UKUT 00197 (IAC)**, I note that both the younger children have spent significant periods of time in the UK when their focus would not have been restricted to their parent and home, but have encompassed a wider social context. I acknowledge that a 7 year period is expressly citedIn **Azimi-Moayed** as being a significant time, but it is not a ‘bright line’ matter: whilst 7 years is identified as a relevant period, what constitutes lengthy residence is not clear cut; necessarily what constitutes a disproportionate interference will depend upon all of

the facts and circumstances of a case and is not to be determined by simple (slavish) reference to a specific period of time.

61. In respect of the proportionality balance, as I have already indicated the behaviour of the First Appellant in seeking to advance a misrepresentative account of the family history and circumstances, is not a matter that should be held against the Second and Third Appellants in a consideration of proportionality. The boys have nothing otherwise adverse in their immigration histories. Looking to the future the evidence would suggest that they will be adequately supported through family funds; there is no obstacle to integration and I in any event find that they are already well integrated into British society. They have already been described as 'assets' by the First-tier Tribunal Judge and I see no reason why they will not continue to develop in such a way. On the other hand, their removal to Nigeria is more than likely to have a significant impact both emotionally and academically – and in probability therefore developmentally.

62. In all the circumstances I find that the proportionality balance favours the Second and Third Appellants.

63. In such circumstances I am also persuaded, with regard in particular to the decision in **Beoku-Betts** that the proportionality balance also favours the other Appellants. The older siblings are still very much part of the family unit. I note in particular that the Fifth Appellant whilst a student at Oxford Brookes College nonetheless continues to reside at home commuting to college on the days that he has classes, and does so in significant part so that he can continue to provide support in the family home to his younger siblings when required because of the First Appellant's work commitments. On the face of it this is a close-knit family.

64. Necessarily in respect of the Second and Third Appellants if a breach of their Article 8 rights is to be avoided by permitting them to remain in the UK this must be done in the context of also permitting their mother to remain.

65. Accordingly, and notwithstanding my rejection of significant aspects of the Appellants' case put, I find that the Appellants' removal in consequence of the Respondent's decision would be in breach of each of their respective Article 8 rights.

Notice of Decision

66. Pursuant to the errors of law identified in my decision of 13 March 2014 the decisions of the First-tier Tribunal have been set aside.

67. I re-make the decisions in each of the linked appeals. Each of the appeals is allowed.

Deputy Judge of the Upper Tribunal I. A. Lewis **11 June 2015**

APPENDIX

TEXT OF ERROR OF LAW DECISION OF 13 MARCH 2014

1. Although in the proceedings before me the Secretary of State is the appellant, and the Hussains are the respondents, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to the Hussains as the Appellants and the Secretary of State as the Respondent.

2. These are linked appeals against the decisions of First-tier Tribunal Judge Cohen promulgated on 7 January 2014, allowing the Appellants' appeals against the Respondent's decisions dated 20 May 2013 to refuse to vary leave to remain and to remove each of them from the UK.

3. It is unnecessary to rehearse the personal details and the immigration histories of the Appellants and the background to this case for the purposes of this determination - such matters are referred to as is incidental.

Error of Law

4. On 21 March 2013 the Appellants applied for leave to remain in the UK. A covering letter of that date written on their behalf by their representatives stated that the application was "*under the relevant immigration rules Paragraph 276ADE of the Immigration rules, Article 8 of the ECHR and under the relevant home office policies, on the grounds that (I) [the principal Appellant] is a mother of children in education with limited leave in the United Kingdom, and (II) she has very strong private and family life in the United Kingdom*".

5. Features of the application included that the principal Appellant "*had to escape from the matrimonial home for safety and those of her children*", her husband being "*a religious fanatic who is prepared to sacrifice the safety of the applicant and the children in order to please the religious bigot around him*". The application letter was couched in terms of 'persecution' and it was urged upon the decision-maker that there was a need to apply case law "*in relation to the issue of sufficiency of protection in the law of Nigeria*". Even so, there was no formal application for asylum.

6. The application was refused for reasons set out in a 'reasons for refusal letter' dated 20 May 2013, and Notices of Immigration Decision of the same date were issued to each of the Appellants refusing to vary leave, and also containing a decision to remove pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.

7. The Appellants appealed to the IAC. Their Grounds of Appeal in significant part addressed the section 47 removal decisions, pleading that there was in law no power to make such decisions. However, this was to disregard the fact that the section 47 decisions post-dated the amendments to section 47 introduced by virtue of section 51 of the Crime and Courts Act 2013: there was in law power to make such decisions at the time that they

were made. The Grounds otherwise pleaded the ECHR, (although, whilst referring to applicable case law, contained very little meaningful case-specific detail).

8. The First-tier Tribunal Judge found that the Appellants did not satisfy the requirements of Appendix FM of the Immigration Rules (determination at paragraph 15), but allowed the appeals on human rights grounds: see paragraphs 16–22.

9. At paragraph 18 of the determination the Judge stated:

> "The circumstances in this case are relatively unusual. The first appellant is a Christian but her husband was Muslim. He appeared to become more religious in recent times. Religious tensions in Nigeria are widely known and I have been provided with objective evidence in that regard. The appellants' father exercise pressure on the 2nd to 5th appellants to adhere to the Muslim religion. He forced Timmy Hussain to drink a herbal potion that caused him significant harm. He pressurised the 5th appellant into practising the Islamic religion in school against her wishes when she wanted to practise Christianity. He had reports given back to him by the heads of the schools. I find that should the appellant to be returned to Nigeria that they would suffer significant impairment at the hands of their father, father family and his tribe to practice the Islamic religion which is against their wishes. I find that this weighs heavily in the balancing exercise undertaken by me."

10. Having referred to the excellent progress that the Appellants had made in the education system in the UK (paragraph 19), and that the Appellants had been self-sufficient in the UK (paragraph 20), the Judge drew matters together at paragraph 21, which, before reaching a favourable conclusion, he opened in these terms:

> "In the light of the totality of the appellant circumstances particularly bearing in mind the fact that they could not enjoy religious freedom if returned to Nigeria due to the pressure will be exerted on them by their father, and acknowledging that they cannot live independently due to financial constraints and due to this strong contribution made to the UK, I find that the appellant's removal would be disproportionate…"

11. I find that the Judge erred in law in reaching the conclusion at paragraph 18, carried forward into paragraph 21, to the effect that the Appellants would not enjoy religious freedom if returned to Nigeria. I have reached this conclusion, for the following reasons:

(i) Although the Judge referred to "*objective evidence*" in respect of religious tensions in Nigeria, he did not descend to any sort of analysis of that evidence, and made no findings in this regard. The reports that were before him did not, on any reading, support a conclusion of general restrictions in practising the Christian faith in Nigeria, but rather documented incidents in particular areas of Nigeria, most notably the north-east. The Judge has made no attempt to relate these reports to any area in which the Appellants might be able to locate themselves, and otherwise made no assessment of the freedoms or restrictions for Christians in Nigeria.

(ii) In as much as the Judge had regard to the case specific history of the Appellants and the difficulties they had experienced with their father, the Judge wholly failed to consider, or make any findings in respect of, whether there would be available on return any mechanism of protection against the father, his family, or tribe (it being

acknowledged that his tribe was a minority tribe) – whether that mechanism be through the police, the family courts, or otherwise.

(iii) Nor did the Judge give any indication that he had considered whether the difficulties with the Appellants' husband/father could be avoided by relocation within Nigeria.

12. In such circumstances I find that the Judge's conclusion at paragraph 18 was in error of law in that it was inadequately reasoned and was otherwise not supported by any evidential foundation.

13. Necessarily, given that the Judge expressly stated that his conclusion 'weighed heavily' (paragraph 18) in the balancing exercise, and also that he had 'particular' (paragraph 21) regard to it, the error was material to the proportionality consideration and therefore material to the Judge's overall determination.

14. Further to the above I note that at paragraph 21 the Judge also indicated that he had particular regard to the circumstance "*that they cannot live independently due to financial constraints*". I am unable to identify any part of the determination that addresses the financial circumstances of the Appellants, who seem able to live independently in the UK, notwithstanding that it is said that not one of them works. I find that this aspect of the determination also constitutes a material error of law.

15. In consequence, I conclude that the Judge's key findings lacked reasoning and evidential support to an extent that amounted to errors of law. The decisions of the First-tier Tribunal must be set aside, and the decisions in the appeals will require to be remade.

Future Conduct of the Appeals

16. As discussed at the hearing today, there are a number of aspects of the Appellants' cases that lack clarity.

17. It is unclear as to the chronology of the family's residences – bearing in mind that one of the Appellants was born in Poland (in 1993) and another was born in the USA (in 1997). There is at the very least a hint of an affluent and mobile family. Both affluence and mobility may be relevant in considering the impact of relocation after a period of living in the UK. I am issuing directions that a chronology of the history with supporting evidence be provided.

18. There is no meaningful evidence as to the Appellants' financial circumstances. Notwithstanding the supposed family fracture and the removal of the children from the jurisdiction of Nigeria without their father's consent, it is suggested that the father has funded the university education of at least one of the Appellants in the UK. I am issuing directions that the Appellants should disclose their financial circumstances: any failure so to do, or any gaps in the information provided, may lead to adverse inferences being drawn.

19. I also consider it appropriate to request evidence and submissions in respect of matters relating to religious freedoms and protection in Nigeria, internal relocation, and in respect of the family law system.

20. In this latter context, and further to 11(ii) above, the issue at the core of the Judge's determination was essentially a family dispute, albeit one rooted in religion. The principal Appellant claims that she fled Nigeria in fear of her husband, and it is part of her case that she took the children without his consent in order to protect them. These circumstances, it is said, in large part inform the wish to remain in the UK. In such circumstances it seems to me pertinent to be informed as to what, if any, steps may be taken through the family courts in Nigeria to resolve issues where parents disagree as to the upbringing of a child - whether that be in the context of a surviving matrimonial relationship, or, as here, in the context of a separation. In short, it is necessary to explore whether the principal Appellant if she does not wish to live with her religiously oppressive husband is able to retain the custody of her children, and whether she is afforded any protection in respect of their wish to observe the faith of their mother, rather than the faith of their father.

21. It may not be necessary for a complete rehearing of all of the evidence. Indeed, it seems to me that the Judge's conclusions in respect of the progress that the Appellants had made in their education in the UK were entirely sustainable and should stand. Whether other issues need to be revisited may be contingent upon the materials now to be disclosed.

22. In all of the circumstances in my judgement the most appropriate forum for remaking the decisions in the appeals is the Upper Tribunal.

Decision

23. The decision of the First-tier Tribunal Judge contained an error of law. The decision in the appeal is to be remade by the Upper Tribunal.

Consequent Directions

1. The appeal is to be listed for a Case Management Review Hearing at Field House, before me, on 23 April 2014. The purpose of the CMRH is to consider the progress in complying with the Directions below, with a view to fixing a date for hearing. The Appellants need not attend in person, but if not attending should be represented.

2. The Appellants are to file and serve within 21 days a detailed chronology, together with any available supporting evidence, of the family's residences since the date of the first Appellants marriage. The chronology is to include any periods spent abroad by any or all of the Appellants, whether on short visits or for longer purposes. A history of the schooling of each of the principal Appellant's children is to be included.

3. The Appellants are to file and serve within 21 days a detailed account of their financial circumstances, together with any available supporting evidence. Such an account is to include disclosure of all sources of income, and all bank accounts held by the Appellants (whether individually or collectively), and to include a breakdown of their living expenses in the UK (with supporting evidence of household income and outgoings). Such evidence is to include disclosure of the support received from the Appellants' husband/father, together with evidence of the receipt of payments. Failure to disclose any such information, or any gaps in the disclosed information, in the absence of any adequate explanation may lead to adverse inferences being drawn by the Tribunal.

4. Both parties are to file and serve within 21 days all such evidence as to religious freedoms and protection in Nigeria as they wish to rely upon.

5. Both parties are to file and serve within 21 days all such evidence as to the Family Law system in Nigeria as they wish to rely upon.

6. Both parties are to file and serve within 35 days Written Submissions addressing in particular the following issues:

(i) What should be the approach of the UK immigration authorities, and what should be the approach of the Immigration and Asylum Chamber on any appeal, in cases involving the unilateral relocation of children by one parent without the consent of the other parent.

(ii) In circumstances where there may be an issue between parents as to the best interests of a child or children, how should the availability of a forum for resolving such disputes in family courts in the country of nationality be factored into a consideration of section 55 of the Borders, Citizenship and Immigration Act 2009.