



**Upper Tribunal
(Immigration and Asylum Chamber)
Numbers: IA/22533/2014**

Appeal

IA/22733/2014

IA/22740/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 13 January 2016**

**Decision & Reasons
Promulgated
On 4 March 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

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(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Emezie, Dylan Conrad Kreolle, Solicitors
For the Respondent: Mr Diwncyz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizen of Nigeria. The first appellant is the mother of the second and third appellants. The appellants appealed to the First-tier Tribunal (Judge V Mays) against the decisions of the respondent to refuse

them leave to remain in the United Kingdom under paragraphs 276ADE of HC 395 (as amended) and Appendix FM.

2. I am satisfied that the decision of the First-tier Tribunal should be set aside. I have reached that decision for the following reasons. At [36] the judge considered which version of the Immigration Rules should be applied to the applications (and appeals) to these appellants. Having regard to the decision of the Court of Appeal in *Singh* [2015] EWCA Civ 74 she found that she should apply the “new” version of the Rules given that the decisions had been taken on 16 May 2014 and lay outside the window (9 July – 6 September 2012) during which applications should be determined under the “old” Immigration Rules. The judge’s comments are not, in themselves, inaccurate but the judge has failed to take account of the fact that paragraph 276ADE(vi) was subject to an amendment on 28 July 2014. That amendment did not apply to the appellants because the decisions in their cases had been taken in May 2014. The change was possibly material because the test which the judge had to apply under the Immigration Rules in respect of the second and third appellants had been altered by the amendment. Unfortunately, it is unclear from the decision exactly which version of the Rules the judge has adopted in determining the appeals. There are instances in the decision (see [54] and [55]) where it appears that the judge has applied the amended provisions and, in doing so, she may have erred in law. Given the uncertainty, the Upper Tribunal has no alternative but to set aside the judge’s decision. However, I do note that the judge made credibility findings in respect of the first appellant [38] and those findings appear to be unaffected by any error as to the application of the correct provisions. Those findings of fact shall, therefore, stand. The appeals are remitted to the First-tier Tribunal (not Judge V Mays) for that Tribunal to remake the decision.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 9 April 2015 is set aside. The findings of fact of the judge at [38] shall stand. The appeals are remitted to the First-tier Tribunal (not Judge V Mays) for that Tribunal to remake the decision.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 20 February 2016

Upper Tribunal Judge Clive Lane