IAC-FH-CK-V3

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/27816/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 21 March 2016	**On 27 April 2016**
Prepared 21 March 2016	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MS UCHENNA CHINYERE IHEKWABA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Singh, Representative from Greater Manchester Immigration Aid Unit
For the Respondent: Mr G Harrison, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Nigeria, date of birth 1 June 1978, appealed against the Respondent's decision, dated 17 June 2014, to make removal directions under Section 10 of the Immigration and Asylum Act 1999, a

form IS.151A having been served on 4 March 2011 and a human rights based claim having been refused. The appeal against that decision came before First-tier Tribunal Judge P J Holmes (the judge), who dismissed the appeal under the Immigration Rules and on Article 8 ECHR grounds.

2. Permission to appeal was refused by First-tier Tribunal Judge Murray and on renewal was granted by Deputy Upper Tribunal Judge Chapman on 20 April 2015.

3. Mr Singh argued that the judge had erred in law because when assessing the best interests of the children, that is the two eldest children, particularly the eldest, Manuela, who had been in the United Kingdom more than seven years at the time of the judge's decision, had not been properly considered.

4. Essentially Mr Singh argued that the judge had effectively put in place a hurdle in terms of the length of time the children had been in the United Kingdom by not counting the period until 4 years of age rather than looking at the total period of time and the significance of the period that they had been in the United Kingdom, when assessing their best interests. In other words, the judge had erred in law in applying the case of *Azimi-Moayed and others [2013] UKUT 00197 (IAC)* and failed to properly assess their best interests by reference to the totality of the time they had been in the United Kingdom rather than discounting a period up to the age of 4.

5. It is clear that the judge had regard to and considered Section 55 of the BCIA 2009 and the judge was alive to the considerations of age in relation to children and the potential significance of interference with the period of time they had been in the United Kingdom and, insofar as it was material, the time young children had been focused on their parents rather than their peers or age group. At paragraphs 18, 19 and 20 to 22 of the decision the judge set out the analysis he had reached on the issue.

6. I have for my part approached this on the basis of seeing whether or not the judge had done enough to meet that general responsibility iterated in the case of *Abdul (section 55 – Article 24(3) Charter) [2016] UKUT 00106 (IAC)*. It is clear that to a degree the nature of the judge's analysis was subject to legitimate trenchant criticism. I was taken to the general obligation as expressed by the President in paragraphs 14 and 15 of *Abdul* as to how the assessment of best interests should be carried out, by reference to available indicators, and the evidence rather than on a broad brush approach. As the President said at paragraph 14:-

> "… The best interests of children exercise, where it falls to be performed, is one of unmistakable importance and gravity. It is not enough to pay lip service to the evidence bearing on this issue. Rather, an Appellate Tribunal will invariably search for indicators that the lower Tribunal has fully considered the evidence, has understood it and has properly engaged with it."

7. In the case of *Abdul*, the President found that there had not been a proper consideration of the relevant issues. The President in paragraph 15 went on to state:

> "Furthermore, the Appellate Tribunal will always search for a clear formulation, or identification, of the best interests of the child or children concerned in the decision of the first instance Tribunal. This should normally be the subject of a clear finding or findings, all material evidence first having been examined."

Again, the President did not find that the judge had properly carried out that exercise.

8. In the present case I was satisfied that the judge did properly consider the evidence before him: It is not suggested that he failed to take into account material evidence relevant to the considerations of best interests: It is not

said that the judge took into account erroneous matters in terms of factual matters relating to the child or children's best interests. Rather the criticism is, as I have identified above, that the judge has misdirected himself in terms of the application of any threshold to the consideration of the best interests of children.

9. I find that the judge, doing the best he could with the evidence and in the light of the way the grounds of appeal are drafted, reached conclusions on the best interests which reflected the arguments advanced and the considerations that obviously arose. I do not find that the decision discloses a misapplication of *Azimi-Moayed* or that in effect the judge was applying a threshold to what was the period of time a child has been in the United Kingdom, for the purposes of assessing the children's best interests. It seemed to me that the judge, doing the best he could, had reached a conclusion on the matter reliant upon the evidence before him.

9. The Original Tribunal's decision stands.

ANONYMITY

An anonymity order was not previously made and nor is one requested now.

NOTICE OF DECISION

The appeal is dismissed.

Signed Date 5 April2016

Deputy Upper Tribunal Judge Davey