



IAC-AH-CJ-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/32189/2013
IA/32211/2013
IA/32216/2013
IA/32221/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd December 2015**

**Decision & Reasons Promulgated
On 5th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**MR EMMANUEL OLUWADAISI AROWOSAFE
MRS JUSTINAH KEHINDE AROWOSAFE**

S A

P A

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Unrepresented

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are Nigerian nationals who appeal with permission a decision of the First-tier Tribunal dismissing their appeals against the Respondent's refusal to allow them leave, outside of the Immigration

Rules on the basis of their private and family life rights. At an earlier hearing on 14th September I set aside the First-tier Tribunal decision, it being conceded by the Respondent, that the judge had materially erred in failing to make a finding as to the best interests of the children and to bring that forward as a primary consideration in the overall balancing exercise required under Article 8 ECHR. The matter was listed for rehearing before me in order to afford the Appellants an opportunity to bring forward updated evidence.

2. The Appellants concede that they have no claim to remain under the provisions of the Immigration Rules set out at HC 395 as amended. The principal Appellant arrived in the United Kingdom as a student on 15th September 2007. His leave was extended to 28th January 2013. His dependent spouse and two daughters joined him here on 24th August 2011. The Appellants' case relies on an assertion that the best interests of the two minor Appellants [SA] born on 27th October 2007, and so 8 years old as at the date of my consideration, and her younger sister [PA] born on 9th March 2009, and so 6 years and 9 months as at the date of my consideration, are to be able to continue to reside in the United Kingdom, and that those best interests should be determinative in the Article 8 balancing exercise to the point that they and the parents should be allowed to remain in the United Kingdom.
3. In support of that contention the Appellants have provided a letter from Haberdashers' Aske's Hatcham College confirming that [PA] has been enrolled with them since 29th August 2014 and is currently in year 2 and that [SA] has similarly been enrolled since 22nd April 2014 and is currently in year 3, with both children having a very good attendance rate. The children's father is noted to attend parents' evenings, school events and to be supportive to the girls and the school. The letter is written and signed by Mrs Marion James, Administration Officer. In addition there is a letter from Lewisham Dental Practice dated 15th October 2015 confirming that the children are registered at the practice and that the father brings the children for regular dental checkups. There is a letter from Lewisham Medical Centre confirming that the father has been registered with the practice since December 2012, and that he brings the daughters to the clinic. The letter is signed by Dr C Brodie, GP. There is a letter of support from Mrs Angela Lynch who confirms that [SA] is a classmate of her daughter and that Mrs Lynch is aware of the father's active involvement in the care of his children, attesting to his collection and delivery of the children to school each day. I have been provided with a photograph of the two girls in the presence of their father and mother and there are various receipts for grocery purchases.
4. Mr Tarlow relied on the reasons for refusal letter setting out the detail of the adult Appellants' failure to establish any entitlement to remain under any category specific part of the Immigration Rules including the private life requirements set out at paragraph 276ADE or the Article 8 family life

considerations of Appendix FM. The only issue is whether or not, even though neither child has the necessary seven years' residence requirement for 276ADE(iv) their best interests were such that the public interest in their removal, as fixed by Section 117 of the Immigration, Nationality and Asylum Act 2002, was outweighed. Mr Tarlow submitted that the evidence showed that in fact the best interests of the children was to be with their parents, and to return with their parents to Nigeria. The parents had lived in Nigeria for many years before coming to the United Kingdom. The children were still in the earlier rather than later years of childhood and able to adapt to life there on return. The parents' preference to remain in the United Kingdom was not significant in the Article 8 balancing exercise.

5. Mr Arowosafe addressed me, emphasising that the children enjoyed their education having an established attendance at Haberdashers' Aske's. Their best interests are paramount. The children have no ties with anyone in Nigeria and had built relationships here. A return to Nigeria at this stage would lead to a setback in their education. The girls were aware of the precariousness of the position here and it had affected them psychologically, they were upset about the possibility of returning to Nigeria and wanted to remain. Mr Arowosafe told me that no-one other than he and his wife were responsible for the children. Mr Arowosafe told me that the Boko Haram insurgency was prevalent throughout the whole of Nigeria with bombing taking place everywhere to the point that the physical safety of the children would be threatened by living in Nigeria. Finally he told me that healthcare in Nigeria was poor. In short the children's position in the United Kingdom was good and their best interests would be threatened if they were returned to the environment of Nigeria.

My Consideration and Findings

6. My starting point must be the best interests of the two minor children. I take into account that [SA] is now 8 years old and [PA] almost 7. I note that they have both been in the United Kingdom since their arrival as dependants of their father in 2011. [PA] has been enrolled at Haberdashers' Aske's, in year 2, since the end of August 2014, and has a good attendance rate. [SA] has been attending the same school for somewhat longer, since April 2014 and is in the year above i.e. year 3. She too has a very good attendance rate. I note the letter from the mother of a friend and classmate of [SA] which tends to show that she has settled into the school and is enjoying her time there.
7. I take account that both of the children are at an early stage in their education. I am told that the children are focused on their life in the United Kingdom rather than the position in Nigeria, and the evidence is that their paternal grandparents had died during the course of the father's studies in the United Kingdom. I note that at their young age their focus is on their immediate family here in the United Kingdom rather than their

country of origin. [PA] was only 3 years old when she arrived in the United Kingdom. [SA] was a little older, being about 5 years old. In that context whilst [PA] may have little or no memory of Nigeria I think it is more likely than not, on a commonsense view, that [SA] will have some recollection of her homeland and life in Nigeria. I find that for both of them their connections with Nigeria are readily renewable in light of their citizenships, prior residence in Nigeria, but most importantly the support that they can anticipate receiving from their parents, both of whom, on the evidence, are responsible and caring individuals. Neither child will have linguistic, medical or other difficulties in reintegrating to life in Nigeria. There is no suggestion that there will be any linguistic difficulties for the children on return to Nigeria, although I am told that the medical facilities available in Nigeria are not of the standard in the United Kingdom, neither of the minors have any specific medical difficulties so that I am satisfied that that position carries little weight in my assessment.

8. The proposed removal will not interfere significantly with either [PA]'s or [SA]'s family life as the intention is to remove them as part of their family unit. I take account of the general concerns about the security situation in Nigeria arising from the Boko Haram insurgency and the general law and order concerns raised by their father. However whilst that may account for the parents' preference for the children to remain in the United Kingdom, the sweeping assertions made by Mr Arowosafe do not provide a proper evidential basis for me to attach significant weight to that position.
9. Taking the case at its highest it has not been established on balance that the consequences of the children's return to Nigeria in the company of their parents are significantly deleterious. In short the ordinary position prevails: it is in the best interests of these children to be where their parents are.
10. I bring forward my consideration of the best interests of the children into the overall balancing exercise required in an Article 8 ECHR assessment.
11. The weight to be given to the public interest in maintaining immigration control, in the context of the Appellants having no entitlement to remain, is strong. Whilst the parents have been here lawfully, the father since 2007 and the mother since 2011, residence has always been on a temporary basis, precarious in the context of limited leave. The precariousness of their residence is underlined by the fact that the father's status as a student, here to do his PhD, could only ever give rise to an expectation of continued family life in the United Kingdom during his studies. In the event his intention to continue his studies for a doctorate in theology were defeated by the demise of his parents. The first Appellant has produced evidence in the bundle as it was before the First-tier to show that he is a committed Christian, an active member of his local church who has helped out at a food bank and charity shop and gained admiration for his service. I note that the Appellant has had the benefit of evidence from

Mr Raymond Woolford who attended at the First-tier Tribunal and confirmed to the judge his understanding that the family were much loved and respected in the community, held in such high regard by him that he was willing to offer to the first Appellant employment in the property management company or in the community project, both of which he ran.

12. The Appellant was born and raised in Nigeria, he was educated to a high level there and as the First-tier Tribunal Judge earlier found, the proposition that his ties to Nigeria had been severed when he left in 2007, is not a realistic assertion in the context of an absence of evidence, other than the demise of his parents, to suggest that he has no other relatives or in-laws or a wider circle of friends and relations.
13. The previous judge's determination found that the Appellants' assertion of complex difficulties involving ethnic and religious discrimination and an ongoing health scare in relation to the Ebola virus, so as to expose the children and family to calamitous events, was found not to be established in the context of this family, returning to Lagos where the father was brought up and has his roots. That consideration was not disturbed by the error in the judge's decision, and, as I set out above, there is no evidential basis before me upon which I could properly take a different view.
14. Standing back and looking at the appeal in the round, bringing forward my consideration of the best interests of the children, and of all the factors relevant to the proportionality exercise, I find that the decision of the Respondent to remove the Appellants does not breach the UK's Article 8 obligations. The decision of the Respondent was in accordance with the law and the Immigration Rules and does not breach Article 8 ECHR.

Notice of Decision

15. The Appellants' appeals are dismissed on all grounds.
16. No anonymity direction is made.

Signed E Davidge

Date 30 December 2015

Deputy Upper Tribunal Judge Davidge