Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/32380/2014
IA/32499/2014
IA/32392/2014
IA/32386/2014

THE IMMIGRATION ACTS

Heard at Field House
On 22 December 2015

Decision and Reasons Promulgated
On 6 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MR BIDEMI TAOFEEK AJAO
MRS BOLAJI AJAO
MISS FAVIOUR AJAO
MASTER BENJAMIN OLUWAFERANMI AYAMOLOWO
(ANONYMITY ORDER NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms D, Revill, Counsel instructed by SLA Solicitors
For the Respondent: Ms A. Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

© CROWN COPYRIGHT 2016

1. This is an appeal by the appellants against the decision of the First-tier Tribunal dated 25 March 2015 dismissing their appeals against the respondent's decision to refuse their application for leave to remain.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I do not make an anonymity order. No order was made by the First-tier Tribunal and although two of the appellants are minors there is little specific detail other than their names and I am not satisfied that an anonymity order is required.

Background

3. The appellants are all citizens of Nigeria. The first and second appellants are husband and wife. The third appellant is their minor daughter born on 15 October 1999 and the fourth appellant is their foster child, born on 9 January 2009. They applied by letter dated 30 March 2014 for leave to remain in the UK on the basis that it was claimed that return to Nigeria would breach their human rights.

4. The first appellant Mr Ajao first entered the United Kingdom on 10 February 1996 and claimed to have remained since that date although this was not accepted by the respondent or by the First-tier Tribunal Judge. It was accepted by the First-tier Tribunal Judge that the first appellant has been in the UK from 2006 onwards. The second and third appellants have been residing in the UK since 2008. There was no definitive evidence as to when the fourth appellant entered the UK. The first and second appellant indicated that they did not know how long he had been in the UK prior to the fourth appellant being left with the first and second appellants by his mother in August 2013.

5. The respondent refused the appellants' application in decisions dated 28 July 2014 to remove the first three appellants as illegal entrants/persons subject to administrative removal under section 10 of the Immigration and Asylum Act 1999 and the decision dated 18 July 2014 that the fourth appellant was a person in respect of whom removal directions may be given in accordance with Schedule 2 to the Immigration Act 1971. In the reasons for refusal letters (dated 28 July 2014 in respect of the first three appellants and 21 July 2014 in respect of the fourth appellant) the respondent did not accept that the appellants met the requirements of either Appendix FM or paragraph 276ADE of the Immigration Rules. The respondent also considered that there were no exceptional circumstances which would warrant a grant of leave to remain in the UK.

6. The appeals against those decisions came before First-tier Tribunal Judge V Mays on 27 February 2015. In the 25 March 2015 decision the judge found that the third appellant did not meet the criteria of

paragraph 276 ADE(1)(iv) and that none of the appellants succeeded under Article 8 outside of the Immigration Rules.

7. Permission to appeal to the Upper Tribunal was sought on two grounds: firstly in relation to the third appellant it was asserted that the First-tier Tribunal Judge fell into error in omitting the medical evidence produced to the Tribunal in assessing the best interests of the child and in assessing whether it was reasonable or otherwise for the third appellant to leave the UK (in considering paragraph 276ADE(1)(iv)); and secondly it was argued that in relation to the fourth appellant there was an inadequate assessment of his best interests in particular a distinct assessment given the background story of his arrival in the UK and abandonment by his parents.

8. The appeal came before me. I heard arguments from both representatives and reserved my decision. For the reasons set out below I do not find there to be merit in either ground.

Ground 1

9. Ms Revill relied on her grounds and skeleton argument and asserted that the third appellant relied on a number of factors that were relevant to her best interests and cumulatively it was contended, rendered her removal unreasonable. These included the fact of her ongoing medical treatment; it was not disputed that documents had been produced in relation to a hole in the third appellant's heart and that she was subject to ongoing treatment and monitoring within the UK.

10. Ms Revill argued that the judge erred in not referring to the evidence of the medical condition in the decision and in referring to the respondent's Country of Origin report but not having regard to the section on the availability of medical facilities and educational differences. Whilst Ms Revill was realistic in indicating that the medical condition 'may not be decisive on its own' it was her view that cumulatively with all the other factors this would have rendered removal of the third appellant unreasonable under paragraph 276ADE(1)(iv)

11. I note that the First-tier Tribunal Judge set out at paragraph [6] of her decision all the evidence before her which included a bundle and an additional bundle on behalf of the appellants. In addition to setting out the material considered, the judge, at [47] indicated that she had considered all the evidence in the round. The fact that the judge did not list each and every item considered does not, in the context of the judge's detailed consideration of the third appellant's best interests (at [34] to [48]), indicate any error. The issue of the third appellant's medical condition, whilst clearly before the judge, was not mentioned in any of the witness statements or skeleton arguments indicating

that it was a more minor consideration than for example her education, which may account for the lack of any explicit reference to it by the judge in her reasons. Whilst the fact that it may have been a lesser issue of course does not mean that it did not merit consideration, I am satisfied that the judge considered all the factors (and she directed herself in relation to the approach to be taken and applied EV (Philippines) and others v SSHD [2014] EWCA Civ 874.)

12. In the alternative, if I am wrong in the above, any error by the judge is not material as taken at its highest, it is not realistic to suggest that this evidence, even if it had not been properly taken into account by the judge, was capable of materially changing the best interests' assessment in relation to the third appellant. The medical evidence that was before the judge indicated that the third appellant, as at her last review by the paediatric cardiology consultant in May 2013, was well with no cardiac symptoms. This indicated a follow up in 'about two years' time'. Although, as cited by Ms Revill in her skeleton argument, the respondent's Country of Origin information may discuss general issues with availability and accessibility of medical treatment, there was no evidence before the judge that might have suggested that there was a lack of availability of any treatment that the third appellant might require in Nigeria. The judge found that the first and second appellant would be able to financially support and provide for the minor appellants and found that there were a number of extended family members in Nigeria who she found may well be able to assist the appellants. She also found that the adult appellants together with her extended would be able to assist the third appellant in integrating into Nigeria and that she spoke English and therefore would have no linguistic difficulties. The judge also considered that the appellant's educational attainments in the UK and her proven adaptability here would assist her in being able to integrate into school and social networks in Nigeria, without significant difficulty. The judge considered that educational provision may not be of the same standard as the UK but that there was provision available.

13. In the context of all these findings therefore it is clear that an ongoing heart condition which the evidence indicates currently requires monitoring by cardiac specialists every two years would not change the outcome of the appeal.

14. In relation to paragraph 276ADE(1)(iv) what neither the First-tier Tribunal Judge nor the parties before me addressed was that the third appellant did not meet the requirements as she did not have seven years residence at the date of application (as set out in the respondent's reasons for refusal, the third and fourth appellants arrived in the UK on 18 February 2008 and the application was made on 30 March 2014). Whilst the judge noted that the respondent in submissions 'accepted that the third appellant has resided in the

United Kingdom for seven years' there is no indication that any concession was made that the third appellant had been resident in the UK for seven years at the date of application. It is clear that she was not.

15. In any event, any error by the judge in relation to her consideration of paragraph 276ADE(1)(iv) is not material as the judge considered Article 8 outside of the immigration rules and relied on her earlier best interests findings. For the reasons given above I am not satisfied that any error (if indeed there was one) was capable of affecting the outcome of the Article 8 assessment, or the appeal generally.

16. I am satisfied that the judge reached a conclusion open to her on the evidence before her and gave detailed, adequate reasons for her findings. I do not find any merit in this ground.

<u>Ground 2</u>

17. It was Ms Revill's submission that the judge failed, in considering Article 8 outside of the Immigration Rules, to make any findings as to the best interests of the fourth appellant or to have regard to the material evidence before her. It was her submission that there was no finding as to what would be in the fourth appellant's best interests or even as to whether he enjoys family life with the other appellants.

18. That is not correct; the judge made a finding at [64] that 'I am satisfied that it will be in the best interests and well-being of the children to remain with their parents and return to Nigeria'. Although the fourth appellant is not the biological child of the family it is clear from the judge's findings that she accepted the evidence before her that the fourth appellant was part of the family and that he enjoyed family life with his foster parents and foster sister. The judge recorded the submissions on behalf of the appellant including at [30] that the fourth appellant 'is part of the family unit and his relationship with the third appellant is a weighty matter'. In the judge's conclusions at [37] in making findings in relation to the third appellant the judge found that:

> '... if she returned to Nigeria she will be returning as part of the family unit comprising of her parents and her foster brother'.

The judge also found that it would be reasonable for the third appellant to leave the United Kingdom with her parents 'as part of a family group'.

19. The judge further found at [54] that:

> 'I accept that the consequences of removal of the appellants to their country of origin would potentially engage Article 8 of the ECHR. The Respondent's decision would not interfere with the Appellant's family life as they would be free to continue to enjoy family life in their

> country of origin. The Respondent's decision would interfere with Appellant's private life in the United Kingdom'.

Whilst the judge may well have erred in her use of apostrophes, any error was typographical and not material, as it is clear from her findings as a whole that the judge is satisfied that all of the appellants enjoy family life together.

20. In relation to the judge's consideration of the fourth appellant's best interests, as noted above the judge reached the following concluding findings at [64] that it was in the:

> '... best interests and well-being of the children to remain with their parents and return to Nigeria'; and at [69]: that:
>
> '... it would be reasonable for both children to leave the United Kingdom as part of a family unit'.

21. The judge's consideration of the fourth appellant's best interests is set out in part at [55]. The judge's consideration included material from Southwark Council Children's Services including a report dated 27 February 2014 and a private fostering assessment record dated 5 November 2013 which the judge specifically refers to in her findings.

22. The report of 27 February 2014 assesses that the family 'demonstrated a commitment to care for Benjamin' and that the first and second appellants 'have both shown in depth knowledge of various parenting issues such as provisions of parenting issues ...'. It was the professional opinion of the social worker who wrote the 27 February 2014 report that the 'commitment and dedication' of the first and second appellants 'is beneficial to him' and that 'the secure attachment provided by the Ajao's would have lifelong consequences' for the fourth appellant particular in the context of his mother abandoning him in the UK. The private fostering assessment record in November 2013 also accepted that the first and second appellants were 'willing to look after Benjamin' and that a conversation with the fourth appellant's father confirmed that he was happy for the fourth appellant to remain in the care of the Ajao family. Social services were also of the view (1.1.30 of the November 2013 private fostering assessment) that:

> '... although insecure attachment in early childhood (i.e. mother having abandoned him & his father of-loading onto the Ajaos his responsibility to care for his son) can set the stage for Benjamin to be adversely affected by potential risk factors. However these concerns can be compensated by his positive attachment to Mr and Mrs Ajao'.

23. It is clear therefore from the detailed Social Services' reports that it is considered that Benjamin's interests lie in remaining part of the Ajao family. The judge's findings, of the family unit and that it was in their

best interests to all return to Nigeria, reflects those reports and the evidence generally that the four appellants are a family.

24. The judge's overall findings including the conclusions at [64] and [69] as to the fourth appellant's best interests being in returning with the family to Nigeria and that it would be reasonable for him to do so, demonstrate that she has considered the findings of the social work reports, including as summarised above.

25. The decision-maker is required to be properly informed of the position of the child affected and a scrupulous analysis is required in identifying the child's best interests; JO and others (section 55 duty) Nigeria [2014] UKUT 00517, applied.

26. The respondent considered all the factors in relation to the fourth appellant in the separate reasons for refusal letter dated 21 July 2014 considering the position of the fourth appellant (although it was specifically stated that his position was being considered alongside that of the Ajao family). It is also evident that the judge has conducted the required analysis of the fourth appellant's individual circumstances and reached the conclusion at [64] that it was in the fourth appellant's best interests to return to Nigeria with his foster family. The judge, in addition to directing herself in relation to the guidance in applied EV (Philippines) and others v SSHD (above) also indicated (at [64]) that she had considered the guidance provided in Zoumbas v SSHD [2013] UKSC 74 in relation to the best interest of a child and the proportionality assessment.

27. The judge discussed at [55] that a return to Nigeria may allow the fourth appellant, 'with the support of the first and second Appellant' to 're-establish contact with his father'. The judge had considered the evidence including that the fourth appellant's father had, until late 2013, been in contact with him by telephone from Nigeria. It is not the case that the judge was unclear as to who the fourth appellant would be living with in Nigeria as an analysis of all her findings indicates that the judge was satisfied that a return to Nigeria with his foster family was in his best interests. However the judge was also of the view that the possibility of re-establishing contact with his father in Nigeria 'would enhance his family life.' That was a consistent finding that was open to her on the evidence before her.

28. I am satisfied that when considered in its entirety the judge made adequate findings properly open to her. The second ground of appeal therefore also has no merit in my findings.

Decision:

29. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and shall stand.

Signed: Dated: 4 January 2016

Deputy Upper Tribunal Judge Hutchinson