



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

Appeal Numbers: HU/11245/2015  
HU/11249/2015  
HU/11253/2015  
HU/11259/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 26 October 2017**

**Decision & Reasons  
Promulgated**

**On 3 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LATTER**

**Between**

**SAMUEL [W]**

**FOLUKE [W]**

**[C W]**

**[E W]**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Karim of MA Consultants.

For the Respondent: Mr P Deller, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the appellants against a decision of the First-tier Tribunal issued on 26 January 2017 dismissing their appeals against the

decision of the respondent made on 5 November 2015 refusing them further leave to remain on the basis of their family and private life.

### Background.

2. The appellants are citizens of Nigeria. The first appellant was born on January 1970 and the second appellant, his wife on April 1971. The third and fourth appellants are their children, a daughter born on January 2011 and a son on January 2008.
3. The first and second appellants made an unlawful entry into the UK on 31 December 2006 with the help of an agent. The third and fourth appellants were both born in this country. On 8 December 2011 the appellants applied for leave to remain on human rights grounds but their application was refused on 7 February 2013 with no right of appeal. A further application was made on 18 November 2013 for leave under the EEA grounds but this was refused on 13 January 2014. On 13 October 2015 the first appellant was served with notice as an illegal entrant and on 30 October 2015 a further application was made for leave to remain on the basis of their human rights.
4. The application was refused for the reasons given by the respondent in the decision letter dated 5 November 2015. She was not satisfied that the appellants were able to meet the requirements of the Rules under appendix FM or the provisions of para 276 ADE(1) or that there were exceptional circumstances entitling them to a grant of leave to remain outside the requirements of the Rules.

### The Decision of the First-tier Tribunal.

5. The appellants appealed to the First-tier Tribunal. The judge heard evidence from the first appellant and at [11]-[15] he recorded the submissions of the representatives. He then set out his findings of fact as follows:

"16. The burden of proof is on the appellants and the civil standard of the balance of probabilities applies. The first appellant arrived in the UK illegally on 31 December 2006. His children were born in the UK on 18 January 2006 and 30 January 2011. It is accepted on behalf of all the appellants that they cannot meet the family life requirements under appendix FM of the Immigration Rules. I am satisfied that it is not unreasonable for the children to return to Nigeria as a family unit with their parents. There would not be any significant obstacles to their parents returning to that country, where they have spent the majority of the previous life and the second appellant still has relations with whom she is in touch. This is also consistent with the respondent's obligations to consider the children's welfare under S. 55 of the 1999 Act.

17. Nor are there any exceptional or compelling circumstances which would justify consideration of their claim under article 8 ECHR outside the rules. In any event, for the same reasons it would not be disproportionate for them to return to Nigeria even if I were to consider any claim under article 8 ECHR."

### The Grounds of Appeal and the Error of law

6. In the grounds of appeal it is argued that the judge failed to give adequate reasons for his findings on whether it was reasonable for the children to relocate; conflated the issue of reasonableness with that of insurmountable obstacles; failed to consider MA (Pakistan) [2016] EWCA Civ 705 and S.117B(6) of the 2002 Act and failed to give proper consideration to whether the appellants could succeed under article 8 outside the Rules. Permission to appeal was granted by the First-tier Tribunal on the basis that the grounds disclosed properly arguable points of law.

### The Error of Law

7. The respondent has indicated in her Rule 24 reply that she does not oppose the appellant's application for permission to appeal. It is conceded that the First-tier Tribunal erred in law. This concession is properly made. I am satisfied that the judge erred in law by failing to give adequate reasons particularly on the issue whether it would be reasonable for the children to return to Nigeria. Further, he failed to give adequate consideration to the best interests of the children or properly to consider the provisions of s.117B(6) or the jurisprudence in MA (Pakistan). The errors are such that the proper course is for the decision to be set aside.
8. Both representatives submitted that the appeal should be remitted to the First-tier Tribunal. I am satisfied that this is the proper course as it is agreed that there needs to be a full rehearing.

### Decision

9. The First-tier Tribunal erred in law and the decision is set aside. The appeal is remitted to the First-tier Tribunal for a full hearing by a different judge.

Signed H J E Latter

Date: 30 October 2017

Deputy Upper Tribunal Judge Latter