Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/22272/2015
IA/20627/2015
IA/22298/2015
IA/22287/2015

THE IMMIGRATION ACTS

Heard at the Employment Tribunal Birmingham	**Decision Promulgated**
On 10 May 2017	**On 18 May 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

OLUWATOSIN OLOLADE ARANNILEWA
ADEAYO DAVID ARANNILEWA
[O A]
[A A]
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dixon instructed by Raffles Haig Solicitors
For the Respondent; Mrs Aboni Senior Home Office Presenting Officer

DECISION AND REASONS

1. On the 20 May 2015 the Secretary of State refused the first appellants application for leave to remain on human rights grounds made on the basis (i) the first appellant lives with her husband and two children in the UK, (ii) the first appellant and her family have no ties to Nigeria, (iii) that the fourth appellant suffers from Pulmonary Stenosis and receives continuous treatment and also suffers from eczema, (iv) that the third appellant is part of a dance troupe known as Sylvia Bird School of Dance and that removal would breach the respondent's obligations under Article 8 of the ECHR and (v) that the children have never left the UK since birth and are accustomed to British life.
2. The appellants appealed the refusal which was heard by First-tier Tribunal Judge Juss ('the Judge') who in a decision promulgated on 25 April 2016 dismiss the appeals. The Judge noted the first appellant is the principal appellant with the remaining appellants being her dependants.

Background

3. The Judge sets out relevant findings at [10] to [15] of the decision in the following terms:

> "10. I have given careful consideration to all the documents before me and to the evidence and submissions, which are set out in the Record of Proceedings.
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> 11. I find that the Appellants do not discharge the burden of proof. My reasons are as follows. This is a case where the first and second Appellant have arrived in this country illegally and on a false passport. They have done so deliberately. They have established a family in circumstances where they knew that their presence here was "precarious". They have fallen off the radar. They have emerged only when they have felt it was safe for them to do so, with the eldest child's age being over 7 years, so as to avail themselves of the human rights arguments and the well established principle in immigration law that presence in the UK for seven years is a relevant matter for consideration.
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> 12. It is not, however, decisive. One knows that to be the case because the public interest considerations in Section 117B of the 2002 Act are now such that they have to be always taken into account in the balancing exercise with any human rights that are put forward by the Appellant. I am aware that the case of **Azimi-Moayed** suggests that the ages from 4 to 7 years is going to be more significant than 1 to 4 years, but the matter is still not conclusive, and everything has to be taken into account. As against this, the children are to be returned with their parents as a single-family unit. In the case of **Zoumbas [2013] UKSC 74** the children were much older, and although these children have all been born in the UK, this does not mean to say that it follows that their removal with their parents can never be legitimately demonstrated.
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> 13. The Section 55 consideration in the BCIA 2009, which requires attention to be given to "best interest" of the child does not mean that, with the availability of educational facilities and medical help in Nigeria, that their best interests will not be served, especially given that they are going to be accompanying their parents, who have a long association with Nigeria.
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> 14. In coming to these conclusions, I have been particularly guided by the case of **EV (Philippines) [2014] EWCA Civ 874.** As was made clear in that case, "the assessment of

the best interests of the children must be made on the basis that the facts are as they are in the real world…" This means that,

"if neither parent has the right to remain, then it is the background against which the assessment is conducted. Thus, the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?" (See paragraph 58).

For the reasons I have given, especially in the context of the children's educational and health needs, I can see no reason why it is considered unreasonable to expect them to follow their parents who have no right to remain in this country. As that case also made clear,

"in our case none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. If the parents are removed, then it is entirely reasonable to expect the children to go with them" (see paragraph 60).

Indeed, that case also stands as authority for the proposition that, "it would have been appropriate to consider the cost to the public purse in providing education to these children" (see paragraph 61), in circumstances where they had no right to remain in this country.

15. On the totality of the evidence before me, I find that the Appellants have not discharge the burden of proof for the reasons given by the Respondent to justify the refusal. Therefore, the Respondent's decision is in accordance with the law and the applicable Immigration Rules."

4. The Judge therefore dismissed the appeal.

5. On behalf of the appellants Mr Dickson applied for permission to appeal to the Upper Tribunal which was refused by a judge of the First-tier Tribunal on the 2 September 2016 in the following terms:

"1. The applicant seeks permission to appeal a decision of FtTJ Juss dismissing their appeals for leave to remain on A8 grounds.

2. The grounds seek to argue that the FtTJ's finding that parents had arrived illegally and hid in the UK until the eldest child was 7 years old before emerging and seeking to regularise status wrongly attached the parents poor conduct to the children. There is no merit in this ground. The findings made by the FtTJ were properly open to him on the evidence before him and he then went on to consider the Section 55 best interests of the children properly applying EV(Philippines) and concluded their best interests were to return with their parents as an intact family unit.

3. Contrary to the submission on paragraph 117B, the FtTJ has not approached his findings in a "skewed manner" but has properly found that it is reasonable for the children to accompany their parents to Nigeria (paragraph 14) a finding he was entitled to reach on the evidence before the Tribunal.

4. Overall the grounds amounts to a disagreement with the findings of the FtTJ and an attempt to re-argue the appeal. They disclosed no arguable errors of law."

6. The application for permission was renewed to the Upper Tribunal directly where it was considered and refused by Upper Tribunal Judge Kekic on 24 October 2016 in the following terms:

> "The appellant (with her husband and their two children) challenges the decision of First-tier Tribunal Judge Juss who dismissed this article 8 appeal.
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> The grounds argue that in finding that the appellant evaded immigration control until she made her human rights application in 2014, the judge failed to take account of the earlier application made in 2009. It is maintained this influenced his decision and also that he unfairly did not put the matter to the appellant at the hearing. The grounds also take issue with the judge's assessment of s. 117B, maintaining that he did not properly apply it. Finally it is argued that he misapplied EV (Philippines) [2014] EWCA Civ 874.
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> The grounds fail to make out any arguable error of law in the determination. The appellant and her husband both entered illegally and even if they made an earlier application to remain, the fact is that they did not leave as they should have done after it was refused and their appeal failed. In any event, the judge specifically pointed out (at paragraph 12) that this was not a decisive matter and he took various other considerations into account. The reliance upon EV is explained at paragraph 14 and shows no misapplication. Section 117B was also considered and the judge took full account of the best interests of the children. Given current case law, and in the absence of any compelling or exceptional circumstances in this case which would differentiate it from any other case of a family who establish their lives here during a precarious period, it is difficult to see how any other outcome would have been possible. The judge found that despite the eldest child's period of residence, it would be reasonable to expect him to return with the rest of the family to Nigeria where their family life could continue. There is no arguable error in that finding. That and the other conclusions reached are wholly sustainable."

7. The appellant then challenge the decision of Upper Tribunal Judge Kekic by way of judicial review to the High Court. In an order sealed on the 12 January 2017 permission to bring judicial review was granted by the Honourable Mr Justice Andrew Baker in the following terms:

> **"Permission is hereby granted**
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> **Observations:**
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> There is no merit in the attempt to challenge the view of the facts adopted by First Tier Tribunal Judge Juss at paragraph 11 of the Decision. Upper Tribunal Judge Kekic rightly analyse the failure to leave after the unsuccessful application in 2009 as making the Appellant's position on the merits worse, not better. The burden of proof is immaterial: it is clear from paragraph 11, and explicit in paragraph 15, that Judge Juss was affirmatively persuaded by the Respondent that the decision to refuse the Applicants leave to remain in the UK was justified. Likewise, Judge Kekic's slip in saying that there had been an appeal against the 2009 decision is immaterial.
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> However, Judge Juss' decision raised an arguable point of important principle, namely whether the approach adopted by the Court of Appeal in *EV (Philippines)* [2014] EWCA Civ 874 is rightly to be applied without question to a case in which both children were born in the UK and one is now a 'qualifying child' within s. 117D(1)(b)."

8. In an order sealed on 3 February 2017 the High Court, having noted that there had been no request for a substantive hearing, quashed the refusal of permission to appeal.

9. On 15 February 2017 Mr CMG Ockelton, Vice President of the Upper Tribunal, granted permission to appeal to the Upper Tribunal for the following reasons:

> "Permission is granted in light of the decision of the High Court in this case. The parties are reminded that the Upper Tribunal's task is that set out in s.12 of the 2007 Act."

10. The Secretary States Rule 24 reply dated 1 March 2017 opposes the application in the following terms:

> "1. The respondent in this appeal is the Secretary of State for the Home Department. Documents relating to this appeal should be sent to the Secretary of State for the Home Department, at the above address.
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> 2. The respondent opposes the appellant's appeal. In summary, the respondent will submit *inter-alia* that the judge of the First-tier Tribunal directed himself appropriately.
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> 3. It is recorded in the determination that the first appellant accepted, in her witness statement, that she and the second appellant entered the UK illegally in 2005. The judge's observations in paragraph 11 – that they entered illegally on a false passport and established a family in the knowledge of their "precarious" immigration status – are not challenged. The judge gave weight to the matter of the first and second appellants poor immigration history and dishonesty, rather than to the specific tactic of waiting until their child reached the age of seven before making themselves known to the immigration authorities. In light of this, it seems likely that the judge, in conducting the balancing exercise, would not view the matter of the second appellant's application favourably, given that the appellants now appear to accept that the second appellant entered the UK in 2005, rather than the much earlier date claimed in his 2009 ILR application. In either scenario, the conduct of the appellant(s) has been dishonourable, and it is clear that it is in respect of this fact that the judge drew adverse inference. On that basis, the outcome of the appeal could not have been different.
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> 4. The judge had in mind the provisions of Section 117B. It is a matter for the judge to decide whether or not the public interest considerations weigh in favour of the appellants. In referring to the case of *EV (Philippines),* the judge quoted that "it would have been appropriate to consider the cost to the public purse in providing education to these children". He was clearly mindful of the burden on taxpayers – an important element of Section 117B. It is difficult to see how Section 117B could have led the judge to a different decision, given that the appellants have never resided lawfully in the United Kingdom.
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> 5. The fact of the third appellant being a "qualifying child" for the purposes of Section 117B does not secure the appellants' success, since the judge reached an adequately reasoned decision that it would not be unreasonable to expect the children to follow their parents to Nigeria.
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> 6. The best interests of the child are a primary, but not a paramount consideration. In all the circumstances of this appeal, the judge was clearly of the view that the family can reasonably be expected to leave the UK as a family unit. Furthermore, the case of Azimi-Moayed notes that seven years from the age of four is likely to be more significant to a

child that the first seven years of life - a threshold that neither child in this case is reached.

7. The difference in circumstances in the case of *EV (Philippines)* does not negate its applicability in this case. The key consideration, quoted by the judge in paragraph 14, remains the same - is it reasonable to expect the child to follow the parent with no right to remain in the country of origin? In both cases, none of the family is a British citizen, and none has the right to remain in the UK.

8. The respondent will submit that the determination exposes no material error of law."

Error of law

11. Although the refusal of permission by Upper Tribunal Judge Kekic has been quashed those parts refusing permission to appeal in relation to the challenge to [11] of the First-tier decision, as explained in the first paragraph of the order of Mr Justice Andrew Baker, are similarly adopted by this Tribunal meaning the only area upon which detailed submissions are required relates to whether the Judge erred in law in relation to the approach adopted by the First-tier Tribunal when considering *EV (Philippines)*.
12. Mr Dixon, in his opening address, acknowledged the basis of the grant is a focus on how the Judge applied to the decision in *EV (Philippines)* but claimed it is not possible to divorce such consideration from the way the best interests of the children have been considered. It was submitted that the Judge failed to have regard to the factual matrix set out in *EV (Philippines)*, and that that case was decided when neither paragraph 276ADE(1)(vi) nor section 117B(vi) and the concept of a 'qualifying child' featured. It is also submitted that the child in *EV (Philippines)* fell short of the relevant seven-year period leading to the merits of the case being considered outside the Immigration Rules.
13. Mr Dixon submitted that the Judge did not address himself properly in relation to the approach and nor did he have regard to Presidential guidance, including the need for strong reasons why a person who has remained in the United Kingdom for seven years should be removed.
14. It was submitted that the Judge fails to undertake the required balancing exercise and to assess the merits by reference to the reasonableness test.
15. It was submitted a Social Workers report gives reasons beyond purely educational matters as to why the child should remain in the United Kingdom and that the best interest factors go beyond simply schooling and should include the child's social life. It is argued these are elements of the best interest's assessment at the Judge did not factor in. The Judge only refers it [14] to education and health needs.
16. It was also submitted that it was necessary for the Judge to consider the degree to which it can be expected the child will make a positive contribution to the United Kingdom as the child was a bright child described as being "gifted and talented" which was a separate consideration beyond just disruption, requiring the Judge to assess what weight it should be given. It was submitted this is a significant countervailing factor.

17. Mr Dixon accepted, following an observation from the Tribunal, that any future contribution would be speculative but maintained that the Judge had not dealt with the same at all which had been missed by the Judge.
18. It was accepted by Mr Dixon that the issue is the weight to be given to the various factors but maintained that in a case such as this when the evidence related to more than mere disruption it could not be said that the Judge had properly considered the issues and consider the factual matrix, or that if he had done, his decision would have been the same.
19. It was also argued the Judge failed to consider section 117(B)(6) which is a key omission as it is not a case where it is said the family lacked the required English language skills or will be dependent financially upon the public purse.
20. There have been numerous changes in relation to the way in which human rights appeals are to be considered by virtue of changes to both the Immigration Rules and statutory provisions and more recently by the Supreme Court, which confirmed that the Tribunal's jurisdiction in such matters is a Human Rights jurisdiction requiring an assessment of the merits of the parties competing arguments before any conclusion is reached in relation to the proportionality, or otherwise, of a decision.
21. It is important to bear in mind in relation to this matter that the Judge did not slavishly follow *EV (Philippines)* on its facts or as if it were a country guidance case. The Judge refers in the decision under challenge to several submissions having been made by the advocates containing specific reference to *EV (Philippines)*. Specific reference to this can be found in [7], [9] and the Judges conclusions at [14] set out above.
22. There have been a number of decisions of the Court of Appeal and Upper Tribunal one of which is the case of *EV (Philippines) and Others v SSHD [2014] EWCA Civ 874* in which it was held that the best interests of the child were to be determined by reference to the child alone without reference to the immigration history or status of either parent (paras 32 and 33). In then determining whether or not the need for immigration control outweighed the best interests of the children, it was necessary to determine the relative strength of the factors which made it in their best interests to remain in the UK; and also to take account of any factors that pointed the other way. At [35] it was stated that the best interests of children will depend on a number of factors including their age, the length of time that they have been in the United Kingdom, how long they have been in education, the stage that their education has reached, to what extent they have been distanced from the country to which they are to be returned, how renewable their connection with it may be, the extent that they will have linguistic, medical or other difficulties in adapting to life there and the extent to which the course proposed will interfere with their family life or other rights in this country. The longer the child had been in the UK, the more advanced or critical the stage of his education, the looser his ties with the country in question, and the more deleterious the consequences of his return, the greater the weight that fell into one side of the scales. If it was overwhelmingly in the child's best interests that he should not return, the need to maintain immigration control may well not tip the balance. By contrast if it was in the child's best interests to

remain, but only on balance with some factors pointing the other way, the result may be the opposite. In the balance on the other side there fell to be taken into account the strong weight to be given to the need to maintain immigration control in pursuit of the economic well-being of the country and the fact that, ex hypothesi, the claimants had no entitlement to remain. The immigration history of the parents might also be relevant [34 – 37].

23. It must also be remembered there have been a number of changes to the way in which human rights matters are assessed found in the current version of the Immigration Rules, section 117 of the Nationality, Immigration and Asylum Act 2002, and the respondents Immigration Directorate Instructions on Family Migration.

24. *EV (Philippines)* is not a binding authority on the facts or to suggest that a child who has been in the UK for more than seven years must be permitted to remain, as the appeal against the decision in that case was in fact dismissed by the Court of Appeal notwithstanding it being found that the judge in that matter had adopted an approach "too favourable to the appellant" [61]. The importance of that case is the guidance it provides in relation to the approach to be adopted when considering the best interests of the children when the issue before the Tribunal is whether it is reasonable for a qualifying child to leave the United Kingdom.

25. By virtue of section 117D a "qualifying child" means a person who is under the age of 18 and who— (a) is a British citizen, or (b) has lived in the United Kingdom for a continuous period of seven years or more. If a child is a qualifying child for the purposes of section 117B of the 2002 Act as amended, the issue will generally be whether it is not reasonable for that child to return.

26. The decision in *R (on the application of Osanwemwenze) v Secretary of State for the Home Department [2014] EWHC 1563* whilst not specifically concerned with section 117B but has some relevance in terms of the reasonableness of a child leaving the UK. In this case, the claimant's 14-year-old stepson from Nigeria had been in the United Kingdom for more than 7 years and had leave to remain in his own right. It was held that this was an important but not an overriding consideration and it was reasonable to expect the claimant's family including the stepson to relocate to Nigeria. The parents had experienced life there into adulthood and would be able to provide for the children and help them to reintegrate.

27. In *AM (S 117B) Malawi [2015] UKUT 260 (IAC)* the Tribunal held that when the question posed by s117B(6) is the same question posed in relation to children by paragraph 276ADE(1)(iv), it must be posed and answered in the proper context of whether it was reasonable to expect the child to follow its parents to their country of origin; EV (Philippines). It is not however a question that needs to be posed and answered in relation to each child more than once.

28. It is also important to note that in *R (on the application of MA (Pakistan) and Others) v Upper Tribunal (Immigration and Asylum Chamber) and Another [2016] EWCA Civ 705* it was held that when considering whether it was reasonable to remove a child from the UK under rule 276ADE(1)(iv) of the Immigration Rules and section 117B(6) of the Nationality, Immigration and Asylum Act 2002, a

court or tribunal should not simply focus on the child but should have regard to the wider public interest considerations, including the conduct and immigration history of the parents. It was also confirmed however that if section 117B(6) applies then "there can be no doubt that section 117B(6) must be read as a self-contained provision in the sense that Parliament has stipulated that where the conditions specified in the sub-section are satisfied, the public interest will not justify removal." It was additionally held, however, that the fact that a child had been in the UK for seven years should be given significant weight in the proportionality exercise because of its relevant to determining the nature and strength of the child's best interests and as it established as a starting point that leave should be granted unless there were powerful reasons to the contrary.

29. The principles established by the case law have informed the respondents policy to be found in the IDIs on Family Migration, Paragraph 11.2.4. which deals with non-British children. The August 2015 version states that the requirement that a non-British Citizen child has lived in the UK for a continuous period of at least the 7 years immediately preceding the date of application, recognises that over time children start to put down roots and integrate into life in the UK, to the extent that being required to leave the UK may be unreasonable. The longer the child has resided in the UK, the more the balance will begin to swing in terms of it being unreasonable to expect the child to leave the UK, and strong reasons will be required in order to refuse a case with continuous UK residence of more than 7 years.

Relevant considerations are likely to include: (i) Whether there would be a significant risk to the child's health: For example, if there is evidence that the child is undergoing a course of treatment for a life threatening or serious illness and treatment will not be available in the country of return; (ii) Whether the child would be leaving the UK with their parent(s): It is generally the case that it is in a child's best interests to remain with their parent(s). Unless special factors apply, it will generally be reasonable to expect a child to leave the UK with their parent(s), particularly if the parent(s) have no right to remain in the UK; (iii) The extent of wider family ties in the UK: The decision maker must consider the extent to which the child is dependent on or requires support from wider family members in the UK in important areas of his or her life. (iv) Whether the child is likely to be able to (re)integrate readily into life in another country. Relevant factors include: (a) whether the parent(s) and/or child are a citizen of the country and so able to enjoy the full rights of being a citizen in that country; (b) whether the parent(s) and/or child have lived in or visited the country before for periods of more than a few weeks. The question here is whether, having visited or lived in the country before, the child would be better able to adapt, and/or the parent(s) would be able to support the child in adapting, to life in the country; (c) whether the parent(s) and/or child have existing family or social ties with the country. A person who has extended family or a network of friends in the country should be able to rely on them for support to help (re)integrate there; (d) whether the parent(s) and/or child have relevant cultural ties with the country. The caseworker must consider any evidence of exposure to, and the

level of understanding of, the cultural norms of the country. For example, a period of time spent living mainly amongst a diaspora from the country may give a child an awareness of the culture of the country; (e) whether the parents and/or child can speak, read and write in a language of that country, or are likely to achieve this within a reasonable time period. Fluency is not required – an ability to communicate competently with sympathetic interlocutors would normally suffice; (f) whether the child has attended school in that country; (v) Any country specific information, including as contained in relevant country guidance; (vi) Other specific factors raised by or on behalf of the child: Parents or children may highlight the differences in the quality of education, health and wider public services or in economic or social opportunities between the UK and the country of return and argue that these would work against the best interests of the child if they had to leave the UK and live in that country. Other than in exceptional circumstances, this will not normally be a relevant consideration, particularly if the parent(s) or wider family have the means or resources to support the child on return or the skills, education or training to provide for their family on return, or if Assisted Voluntary Return support is available.

30. The IDIs also state that where the applicant does not meet the requirements of the family and private life Rules, refusal of the application will normally be appropriate, but in every case falling for refusal under the Rules the decision maker must consider whether there are exceptional circumstances warranting a grant of leave to remain outside the Rules. Occasionally these exceptional circumstances will be obvious, but generally it is for the applicant to raise them.

31. The core message from *EV (Philippines)* of whether, in the proper context, it was reasonable to expect a child to follow its parents to the country of origin is still good law.

32. Mr Dixon also referred to the ability of the family to speak English and to be self-sufficient but these are not points that stand in the appellant's favour but matters that do not count against them. They are therefore neutral. Had the appellants not been able to speak English or to demonstrate an available income to meet their day-to-day needs, this would have been counted against the appellants in relation to the section 117B assessment. It is important to note that Section 117B is a statutory provision introduced by the Immigration Act 2014 which therefore supersedes any previous rules, guidance, or case law.

33. Although the Supreme Court has reminded us that the jurisdiction is that of a Human Rights jurisdiction, the Secretary of State has set out her case in relation to how the balancing interest should be conducted in both the Immigration Rules and Section 117, which must always form part of the balancing exercise undertaken by the decision maker, and to be properly weighed against any points that may arise in favour of the appellant(s), before making a decision in relation to the proportionality of the proposal to remove.

34. It is also important not to lose sight of the fact that Article 8 does not give a person a right to choose where they wish to live. Article 8 is about preventing unwarranted interference by a State in protected family and/or private life recognised by Article 8.

35. In this matter, the Judge clearly took account all the evidence provided in the appellant's bundle as noted in [3] of the decision under challenge.
36. The Judge took account of the immigration history together with what was being said in relation to the children of the family, including the daughter who was at that time 8 ½ years of age and the fourth appellant son who was three years of age [5] and the difficulties it was submitted the older child may experience in mixing with children in Nigeria if returned, and her involvement with the dance group at school. It is not found the Judge failed to take account of, ignored, or did not apply the appropriate weight to any aspect of the factual matrix of this case that the Judge was asked to consider.
37. The Judge also carefully noted the submissions made by Mr Dixon on behalf of the appellants and Mr Singh on behalf of the Secretary of State.
38. The Judge's findings from [10] to [15] are set out above. The Judge made no arguable legal error material to the decision in relation to the immigration history of the adults who, even if they made a 2009 application, still failed to leave the United Kingdom when they knew they had no right to remain here. Their presence in the United Kingdom has always been unlawful and therefore precarious.
39. The Judge was aware of the need to conduct a balancing exercise incorporating both the Section 117 factors and any human rights/personal elements put forward by the appellant [12].
40. The Judge considered several authorities all of which are pertinent in relation to considering the best interests of the children and specifically refers to Section 55 of the 2009 Act and at [13] reminding himself of the need for attention to be given to the "best interests" of the child. In this context, the Judge was considering the availability of services required by the children in Nigeria by specific reference to educational facilities and medical help, as these were matters that were advanced on the appellant's behalf during the appeal hearing.
41. This is not a case in which the Judge has limited consideration to those matters as submitted by Mr Dixon. The Judge did what he was required to do namely to consider the competing arguments in the round, in what is described as the "real world" which is, after all, the world in which the children will find themselves, and consider whether it was reasonable to expect the children to follow their parents to Nigeria when no member of this family are British citizens will have a right to remain in the United Kingdom. The Judge clearly found that the two parents, who have experience of living in Nigeria, are capable of meeting the needs of the children, including assisting the children in adapting to a new lifestyle in Nigeria. It has not been made out that, however bright the children are, there is a real possibility of a positive contribution being made to the United Kingdom that could have sufficient weight attached to it that will tip the proportionality assessment in the appellant's favour at this time. If one of the children qualifies as a doctor is always open to her to make an application for leave under the skilled migrant category at a later stage, if appropriate.
42. The conclusion by the Judge that it was reasonable to expect all appellants to return to Nigeria where they can continue their family life together has not been

made out to be a finding outside the range of those reasonably available to the Judge on the evidence made available. It has not been made out before the Judge that the appellants will not be able to re-establish a private life in the United Kingdom or that any element of private life that is lost is sufficient to make the decision disproportionate. There are, for example, dance schools in Nigeria and important dance scene involving performing arts.

43. There is no obligation upon the Judge to set out in specific detail each and every element of the case advanced to him and to make findings on every point providing a reader of the decision is able to understand why the judge arrived at the decision he did. In this case, it is clear why the Judge concluded as he did which is that having considered all the relevant factors as part of the Article 8(2) balancing exercise the Secretary of State had discharged the burden of proof upon her to the required standard to show the decision was proportionate. As the Judge found in [15] "on the totality of the evidence before me, I find that the Appellants have not discharged the burden of proof and the reasons given by the Respondent do justify the refusal. Therefore, the Respondent's decision is in accordance with the law and the applicable Immigration Rules". This is a finding that there was insufficient material advanced on the appellant's behalf to show that this was one of those cases where, despite the adverse immigration history, lack of nationality, ties formed in the United Kingdom by way of private life, the fact family life that exists will continue in Nigeria if the family are removed as the whole, and that the family have relevant experience of living in Nigeria, it was shown that the circumstances relied upon by the appellants were sufficient to outweigh the strong public interest arguments relied upon by the Secretary of State, notwithstanding the fact that the eldest child has been in the United Kingdom for the period of time accepted by the Judge. Such period is not determinative of an appeal is otherwise the statutory provisions and Immigration Rules would say so but they do not. Nor is the fact the eldest child may be approaching a period of 10 years in United Kingdom, after which she may be able to apply for British Citizenship a determinative factor. There is no near miss principle in immigration law. It is the nature of the ties that a person has established, that they are able to prove to a decision maker, and whether any interference with such ties will result in sufficient consequences to outweigh the Secretary's States case that is the salient issue. Finding this was not the case the Judge adopted a structured approach is required by the authorities.

44. The statement in the grounds that the Judge should have made a different decision is a challenge to the weight the Judge gave to the evidence and conclusions arising. There is no arguable merit in such a claim as the judge considered the evidence made available with the required degree of anxious scrutiny and has given adequate reasons for findings made. As such the weight to be given to the evidence is a matter for the Judge. It has not been made out that those conclusions were not available to the Judge or are in any way irrational or perverse.

Decision

45. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

46. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I do not make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 17th of May 2017