



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

Appeal Numbers: IA/23431/2015
IA/23435/2015
IA/23438/2015
IA/24143/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 24 May 2017**

**Decision & Reasons Promulgated
On 5 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**ORO (FIRST APPELLANT)
EO (SECOND APPELLANT)
FO (THIRD APPELLANT)
DO (FOURTH APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr L Rooney, Citizens Advice Bureau, Waltham Forest
For the Respondent: Ms Ahmed, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal by a family who comprise a mother and three minor children. The appeal came before me on 20 March 2017 for an error of law decision and reasons and in a decision promulgated on 30 March 2017 I found there was a material error of law in the judge's decision and adjourned the appeal for a resumed hearing before me. A copy of that decision is appended.
2. The issues before me were:-
 - (a) whether or not the Appellants qualified for leave to remain under the Immigration Rules, or if not;
 - (b) whether their removal to Nigeria would be proportionate and in accordance with Article 8 of ECHR.
3. Mr Rooney, who again appeared on behalf of the Appellants, provided me with a skeleton argument dated 23 May 2017. Ms Ahmed on behalf of the Respondent handed up a copy of the reported decision in SF and others (Guidance, post-2014 Act) Albania [2017] UKUT 120 (IAC). Ms Ahmed indicated that her submission would be very short and I therefore heard her first. She drew my attention to [8] of the decision in SF (op cit) where the reference had been made in [7] to the Home Office guidance set out in the Immigration Directorate Instruction on Family Migration Appendix FM Section 1.0 "Family Life as a Partner or Parent and Private Life, 10 year Routes" August 2015. This provides as follows at 11.2.3:

"Would it be unreasonable to expect a British Citizen Child to leave the UK?":-

"Save in cases involving criminality, the decision maker must not take a decision in relation to the parent or primary carer of a British Citizen child where the effect of that decision would be to force that British child to leave the EU, regardless of the age of that child. This reflects the European Court of Justice Judgment in Zambrano.

...

Where a decision to refuse the application would require a parent or primary carer to return to a country outside the EU, the case must always be assessed on the basis that it would be unreasonable to expect a British Citizen child to leave the EU with that parent or primary carer.

In such cases it will usually be appropriate to grant leave to the parent or primary carer, to enable them to remain in the UK with the child, provided that there is satisfactory evidence of a genuine and subsisting parental relationship."

4. At [9] of the decision in SF:

“It appears to us inevitable that if the guidance to which Mr Wilding has drawn our attention had been applied to the present family, at any time after it was published, and on the basis that the youngest child is a British citizen, the conclusion would have been that the Appellants should have been granted a period of leave in order to enable the British citizen child to remain in the United Kingdom with them.”

5. The Upper Tribunal then proceeded to allow the appeal on the basis it would be unreasonable to expect the youngest child to leave the United Kingdom.

6. I also heard submissions from Mr Rooney on behalf of the Appellants, who made the following points:

- (a) the second oldest child, E (the Third Appellant) who was born in the United Kingdom on 26 January 2007, was registered as a British citizen on 24 April 2017 and he produced the original certificate of British nationality and a copy of that Appellant’s British passport. In these circumstances her appeal falls away given that she cannot be required to leave the United Kingdom;
- (b) Mr Rooney also sought to rely on the fact that not only that child but her older brother (the Second Appellant) had spent ten of his thirteen years in the United Kingdom. Having been born in Nigeria he came to the United Kingdom at the age of 3. He argued and I accept that in fact his appeal falls for consideration under 276ADE(1)(iv) of the Rules, given that he had resided continuously in the United Kingdom for more than 7 years at the date of application [25.7.14]. In light of the fact that his sister is a British citizen and given that this Appellant has resided in the United Kingdom continuously for almost 11 years since the age of 3, I find that it is not reasonable to expect him to leave the United Kingdom and his appeal is allowed on this basis;
- (c) in respect of the First Appellant, the mother of the three children, it is the case that she is now a single parent, given the breakdown of her relationship with her former husband some years ago. It was argued by Mr Rooney that her application qualifies in respect of Appendix FM with regard to R-LTRPT.1.1. which provides as follows:-

“R-LTRPT.1.1. The requirements to be met for limited or indefinite leave to remain as a parent or partner are-

- (a) *the applicant and the child must be in the UK;*

(b) *the applicant must have made a valid application for limited or indefinite leave to remain as a parent or partner; and either*

(c) (i) *the applicant must not fall for refusal under Section S-LTR: Suitability leave to remain; and*

(ii) *the applicant meets all of the requirements of Section ELTRPT: Eligibility for leave to remain as a parent, or*

(d) (i) *the applicant must not fall for refusal Suitability leave to remain; and*

under S-LTR:

(ii) *the applicant meets the requirements of paragraphs E-LTRPT.2.2-2.4. and E-LTRPT.3.1.; and*

(iii) *paragraph EX.1. applies."*

7. In the underlying decision of the Respondent refusing the applications for leave by all the Appellants dated 9 June 2015, no issue was taken with the ability of the First Appellant to meet these requirements except for the fact that the Respondent asserted that the children had not resided in the United Kingdom for seven years and therefore paragraph EX.1. did not apply. That is, of course, incorrect.
8. I find that the first Appellant meets the requirements of R-LTRPT 1.1. and on the evidence before me, that EX.1.(a) of Appendix FM of the Rules does apply on the particular facts, given firstly that the First Appellant's second child, her daughter E, is now a British citizen, and secondly, her oldest son has lived in the United Kingdom continuously for more than ten years, and I find in light of those facts and bearing in mind the Home Office guidance referred to above and the decision in SE (op cit) that it would clearly not be reasonable to expect those children to leave the United Kingdom.
9. I allow the appeal of the First Appellant on this basis.
10. There remains one further child, the Fourth Appellant, who was born in the United Kingdom on 11 December 2012. The appeals of his mother and brother having succeeded, and in light of the fact that his sister has been given British nationality, it is the case that this child should be granted leave in line with his mother.
11. Alternatively, I find that it would clearly be a disproportionate interference with this family's right to private life for this child not to be granted leave in line with his mother. I have had regard to Section 117B(6) of the NIAA

2002 and the public interest and on the particular facts of this case the public interest is clearly in favour of the family remaining together.

12. Whilst the length of leave to be granted is, of course, a matter for the Secretary of State for the Home Department, given that the first Appellant is a single parent and has childcare responsibilities, it may not be appropriate to impose a condition of no recourse to public funds until such time that the first Appellant is in a position to obtain gainful employment to support her family.

Notice of Decision

13. For these reasons I allow the appeals of the First, Second and Fourth Appellants. The appeal of the Third Appellant falls away given that she has now been naturalised as a British citizen.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Rebecca Chapman

Date 1 June 2017

Deputy Upper Tribunal Judge Chapman

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeals and because a fee has been paid, I make a fee award of any fee which has been paid.

Signed Rebecca Chapman

Date 1 June 2017

Deputy Upper Tribunal Judge Chapman