Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/32405/2015
IA/33286/2015
IA/33287/2015
IA/33289/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 December 2017	**On 7 December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

(1) Mrs OLUWASOLAPE AJOKE ADENIJI
(2) Mr ABINEMI ADENKUNLE ADENIJI
(3) Master ALEXANDER DAVID AYOMIDE ADENIJI
(4) Master NATHANIAL OLUWAGBOTMEI ADENIJI
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: In person
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellants appealed with permission granted by First-tier Tribunal Judge PJM Hollingworth on 16 August 2017 against the determination of First-tier Tribunal Judge R Walker who had dismissed the linked

appeals of the Appellants seeking settlement outside the Immigration Rules on Article 8 ECHR grounds mainly on the basis of the best interests of their two young sons. The decision and reasons was promulgated on 24 October 2016.

2. The Appellants, a family, are all nationals of Nigeria. The First Appellant had lawful leave to enter the United Kingdom as a visitor from 9 June 2009, subsequently varied to Tier 4 (General) Student Migrant leave, with her husband and United Kingdom born children as her dependants, until 23 June 2014 when that leave was curtailed. Application was then made for leave to remain on Article 8 ECHR grounds, which was refused on 6 November 2014. The Respondent's decisions were found by the First-tier Tribunal to be not in accordance with the law. Fresh decisions were taken by the Respondent on 22 September 2015, again refusing the applications.

3. Judge Walker first made findings of fact. The Appellants were not able to meet the Immigration Rules, Appendix FM and paragraph 276ADE. Neither of the children had resided in the United Kingdom for 7 years as at the date of the application. The Third Appellant had ASD but was in mainstream education in the United Kingdom and was not receiving any specialist tuition or treatment. His parents knew and understood his condition. Adequate facilities existed in Nigeria for such children in Nigeria and his parents could protect him from backward views if encountered. The judge rejected the Appellants' contentions to the contrary. He also rejected the other claims which the First Appellant and Second Appellant made about the problems they would face on returning to Nigeria. There would be no interference with family life and any interference with private life was proportionate and in pursuit of a legitimate aim under Article 8.2 ECHR. The First Appellant and Second Appellant had only been in the United Kingdom for a temporary purpose, long since fulfilled.

3. Permission to appeal was granted because it was considered arguable (in summary) that the judge's best interests analysis for the Third Appellant was inadequate and that he should have adjourned the hearing to enable the Appellants to produce further evidence.

4. Standard directions were made by the tribunal. A rule 24 notice opposing the appeal was filed by the Respondent.

Submissions

5. The First Appellant and Second Appellant addressed the tribunal, expressing their concern that they had not been well served by their solicitors (no longer instructed) and that the first instance judge had not allowed them to say all that they had wished to. He had not understood how different Nigeria was from the United Kingdom. There would be no help available and autism was not understood. The determination should be set aside and remade.

6. Mr Kandola for the Respondent relied on the rule 24 notice and submitted that there was plainly no material error of law. Neither Appendix FM nor paragraph 276ADE of the Immigration Rules had been met. The judge's Article 8 ECHR findings were open to him. The substance of Agyarko [2017] UKSC 11 had been applied. It was understandable that the decision was disappointing to the Appellants, but the submissions made and the grounds earlier filed amounted to no more than disagreement with a properly reasoned determination. The judge had taken care to engage with the best interests of the individual children concerned, as the determination showed. The balancing exercise had been performed and the judge's conclusions were open to him. Welfare and safeguarding had been addressed and the judge's approach was correct. The onwards appeals should be dismissed.

No material error of law finding

7. In the tribunal's view the grant of permission to appeal was rather too generous, and failed to reflect the fact that the appeals were in reality misconceived. Unfortunately they are typical of many appeals seen in the First-tier Tribunal and again in the Upper Tribunal involving families who cannot meet the Immigration Rules seeking to rely on Article 8 ECHR grounds and relying on their children's best interests. There are high hurdles to overcome.

8. The determination and the typed record of proceedings indicate that the judge gave the Appellants every opportunity to address him on all relevant matters. The summary of the evidence is full and careful, as is the summary of the submissions made by and on behalf of the Appellants. Plainly the judge did his best to direct the First Appellant

to the real issues and did not improperly restrict her evidence or submissions.

9. The Appellants had been on notice since the original First-tier Tribunal decision in 2015 that they needed to present their evidence about their son's best interests and about conditions in Nigeria. They also were well aware of the First-tier Tribunal appeal hearing deadline, of which they had four months' notice. Indeed, the Appellants' bundle contained various materials relating to autism in Nigeria, e.g. "Why children with Autism are often demonised in Nigeria" (28 September 2015), and the judge was entitled to reach findings on which evidence as to the availability of adequate educational provision for the Third Appellant in Nigeria he preferred. He was entitled to prefer the evidence produced by the Respondent for the reasons he gave, which included the inability of the Appellants to produce any satisfactory evidence in rebuttal despite the time and opportunity they had had. Moreover, the judge was entitled to find that the Third Appellant's needs were understood by his parents who would be able to help him. There was no procedural unfairness of any kind.

10. The very experienced judge correctly identified that the issues before him were whether family life could be lived in Nigeria and whether that would be proportionate in Article 8 ECHR terms, in other words, whether there would be "insurmountable obstacles": see the reasons for refusal letter. The judge was well aware that the best interests of two minor children also had to be considered in the Article 8 ECHR balancing exercise to determine proportionality, again all approached through the lens of the Immigration Rules. Agyarko (above) was followed, especially [42] and [43].

11. The tribunal agrees with Mr Kandola's submissions as to the judge's analysis and findings. Close attention was given to the situation of the two minor children, above all the Third Appellant: see [35] to [46] of the determination. The judge examined the appeal with empathy and considered every aspect with care.

12. The judge's findings were all open to him, and cannot be impugned as superficial, unfairly arrived at or unreasonable. There was no tenable suggestion that the experienced judge had misunderstood any of the evidence. Section 117B of NIA 2002 was required to be applied to the findings of fact. The Appellants had been in the United Kingdom

precariously (i.e., on a temporary basis only, study, which had been fulfilled) for many years by the date of the hearing.

13. The tribunal concludes that the Appellants' submissions, like the onwards grounds, amount to no more than disagreement or disappointment with the judge's decision. The tribunal finds that there was no material error of law in the decision challenged.

DECISION

The appeal is dismissed

The making of the previous decision did not involve the making of an error on a point of law. The decision stands unchanged.

Signed **Dated 6 December 2017**

Deputy Upper Tribunal Judge Manuell