



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/17937/2016  
HU/17942/2016

THE IMMIGRATION ACTS

Heard at Field House  
On June 15, 2018

Decision & Reasons Promulgated  
On June 21, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MISS OLAYINKA FADEYI  
MR EMMANUEL AKINWUNMI ADIGUN  
(NO ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Mannan, Counsel, instructed by Duncan Lewis Solicitors  
For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity order in this appeal.
2. The appellants entered the United Kingdom on October 2, 2008 on visit visas. At the time the second-named appellant was aged nine. On May 9, 2011 they were served with form IS151A. On March 17, 2016 the appellants applied for leave to remain on

family/private life grounds under the Immigration Rules. The respondent refused their applications on July 8, 2016 and grounds of appeal were lodged on July 22, 2016.

3. Their appeals were listed before Judge of the First-tier Tribunal Oliver on December 15, 2017 and in a decision promulgated on January 8, 2018 the Judge concluded there were no compelling reasons which outweighed the public interest in the maintenance of fair but firm immigration control.
4. The appellants sought permission to appeal that decision on January 22, 2018. The grounds argued that the Judge had erred when considering the second-named appellant's appeal because at the date of hearing he had spent half his life in the United Kingdom and was entitled to rely on paragraph 276 ADE(v) HC 395. Human rights were raised generally.
5. Judge of the First-tier Tribunal Hollingworth considered the grounds of permission on April 24, 2018 and he found it arguable the Judge had erred in not accepting there were compelling reasons enabling him the Judge to proceed to consider whether there would be a breach of article 8 in relation to the circumstances of the second appellant.

### **Preliminary Issues**

6. At the commencement of the hearing I clarified with the appellants' representative what exactly was being appealed because on the face of it, it seemed that grounds of appeal had only been lodged for the second-named appellant and there were no grounds of appeal lodged on behalf of the first-named appellant. Mr Mannan agreed that the grounds mainly concerned the Judge's approach to the issue of paragraph 276ADE HC 395 but paragraph 3 of the grounds raised a flawed approach on human rights generally and the permission addressed this issue.
7. Both representatives agreed that in considering paragraph 276ADE HC 395 the relevant date for calculation was in fact the date of application and not the date of hearing. In these appeals the applications had been lodged on March 17, 2016. According to the papers before me the second named appellant had entered the United Kingdom on October 2, 2008. He had therefore been in the country seven years and five months. He was, at the date of application, just under 18 years of age. Mr Mannan conceded paragraph 276ADE HC 395 did not apply in this case.
8. Mr Bramble accepted that the Judge's assessment of article 8 human rights was flawed. The Judge had not considered the second-named appellant's situation in any detail and in light of the period he had been here and his age that amounted to an error in law. He further conceded that the first-named appellant's appeal was consequently flawed as her case followed on from the success or otherwise of her son's appeal.
9. Mr Mannan did not disagree with this approach and in the circumstances, I found an error of law for the reasons set out above.
10. Both representatives then invited me to remit the matter back to the First-tier Tribunal because there had been no consideration of the appellants' cases under article 8 ECHR.

Having considered the matter carefully and mindful of the fact there had been no findings of fact made I agreed to remit the matter back for findings and a fresh decision to be made.

**DECISION**

11. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
12. I remit the matter back to the First-tier Tribunal for oral evidence and findings as to whether there are compelling circumstances that mean either appeal should be allowed under article 8 ECHR.

Signed

Date June 15, 2018

A handwritten signature in black ink that reads "SPARIS". The signature is written in a cursive style with a long horizontal stroke at the end.

Deputy Upper Tribunal Judge Alis