



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/23455/2016
HU/23462/2016
HU/23464/2016
HU/23469/2016

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 19 March 2018

Decision & Reasons Promulgated
On 29 March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

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(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Izevbizua
For the Respondent: Mrs Obomi

DECISION AND REASONS

Introduction

1. An anonymity order was made in respect of these Appellants and shall continue.

2. To avoid confusion the parties are referred to as they were in the First-tier Tribunal.
3. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Somal promulgated on 12 June 2017, which dismissed the Appellants appeals for leave to remain on family and private life grounds.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Somal ("the Judge") dismissed the appeal against the Respondent's decision.
5. Grounds of appeal were lodged arguing that the Judge failed to take into account that A3 and 4 met the requirements of paragraph 276ADE the Immigration Rules and therefore all should be allowed to remain; the Judge failed to recognise that there were particular circumstances that being twins would present very significant obstacles to them reintegrating in Nigeria; the Judge failed to properly consider the best interests for the children; the Judge failed in accordance with the Respondents own policy to identify the very strong reasons why it was reasonable for children who had lived in the UK at the time of hearing for 9 years should leave.
6. On 8 December 2017 Judge Keane gave permission to appeal.
7. At the hearing I heard submissions from Mr Izevbizua on behalf of the Appellants that :
8. He relied on the skeleton argument. The childrens' best interests were to remain in the UK given their length of residence: while not determinative this is a very strong factor. The children will be qualified to register as British in 9/10 months.
9. The parents' circumstances cannot be used against the children.
10. On behalf of the Respondent Mrs Abomi submitted that :
11. The Judge made adequate findings about the best interests of the children and the issue of reasonableness. Being a qualifying child under s 117B6 was not determinative and the Judge considered all of the relevant factors. There was nothing to outweigh the public interest in immigration control.

Finding on Material Error

12. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
13. Contrary to what was asserted in the grounds at paragraph 3 there was nothing in the evidence before the Judge to suggest that being a twin in any way impacted on the family's ability to reintegrate in Nigeria or would present insurmountable obstacles.
14. Contrary to what was asserted in paragraph 2 and 4 of the Grounds the Judge did not find that A3 and A4 met the requirements of the Immigration Rules, specifically paragraph 276ADE (iv) : what she said at paragraph 16 was that the children were "qualifying children in that they had accrued 7 years residence but the provision also required her to consider if they had 7 years residence whether it was reasonable for them to return to Nigeria with their parents which is what she did.
15. It is asserted that the Judge did not consider the best interests of the children although she specifically refers to the importance of this at paragraphs 16 17 18 19 24 25 and 26. She also notes at paragraph 24 that the best interests of the children are not determinative of the appeal and can be outweighed by other factors.
16. The Judge at paragraph 16 correctly identified based on Azimi-Moayed and others (decisions affecting children; onward appeals)[2013] UKUT 197(IAC) (Blake J) that the starting point for the best interests of the children was that they remained with their parents before identifying those other factors set out in the case as relevant to the issue of their best interests. She also went on in paragraph 17 to consider the medical evidence, their young age, their ability to speak the main language of Nigeria and would have the help of their parents in settling in Nigeria.
17. The Judge properly identifies that the children's best interests and the significant weight (paragraph 20) to be attached to their length of residence can be outweighed by the need to maintain firm and fair immigration control coupled with the Appellants immigration history. The caselaw of R (on the application of MA (Pakistan) and Others) v UT (IAC) & Anor [2016] EWCA Civ 705 while not referred to by the Judge makes clear at paragraph 47 that even if the childrens best interests were to remain in the UK this was not determinative " *If Parliament had wanted the child's best interests*

to dictate the outcome of the leave application, it would have said so.” Moreover the assessment of the reasonableness of return must not focus on the position of the children and this has been made clear in MA referred to above and also in AM (Pakistan) [2017] EWCA Civ 180 . The Judge was therefore entitled to take into account that both adult Appellants had been in the UK as overstayers since 2007 and 2005 and while not explicitly referring to this they had accessed public services in the UK they were not entitled to.

18. The decision when considering the interrelationship of rules, statute and case law, the reasoning might be described as rather circuitous, but there is no doubt, reading the decision as a whole, that the judge has correctly self-directed and reached a conclusion open on the evidence and within the assessment thresholds.

CONCLUSION

19. **I therefore found that no errors of law have been established and that the Judge’s determination should stand.**

DECISION

20. **The appeal is dismissed.**
21. **Under Rule 14(1) the Tribunal Procedure (Upper Tribunal) rules 2008 9as amended) the Appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order for anonymity was made in the First-tier and shall continue.**

Signed

Date 27.3.2018