Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/11165/2017
HU/11171/2017
HU/11179/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 March 2019	**On 21 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

M O P E (FIRST APPELLANT)
M A J E (SECOND APPELLANT)
M O-O E C E (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr S Mustafa, Counsel instructed by Jade Law Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Nigeria who form a family unit, the first appellant born on 18 November 1976, the second appellant on 2 February 1983 and the third appellant on 6 September 2009. The first two appellants are husband and wife and the third appellant is their minor child. The appellants appealed to the First-tier Tribunal against the

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decision of the respondent dated 9 September 2017 to refuse their application for leave to remain on human rights grounds. In a decision promulgated on 18 July 2018, Judge of the First-tier Tribunal Chohan dismissed the appellants' appeals. The appellants appealed with permission on the grounds that it was argued that the judge failed to identify what the powerful reasons were for the removal of the qualifying child (**MA (Pakistan) and Others [2016] EWCA Civ 705** and **MT and ET (Child's best interests; ex tempore pilot) Nigeria [2018] UKUT 00088**).

2. At the hearing before me, it was Mr Mustafa's submission that no powerful reasons were provided and that the only reason provided for dismissal of the appeal was the immigration status of the adults, whereas it was confirmed by the Supreme Court in **KO (Nigeria) and Others v Secretary of State for the Home Department [2018] UKSC 53** that that could not be part of the reasonableness assessment. Mr Mustafa confirmed that he did not have any specific submissions in relation to the recent decision of the Upper Tribunal President in **JG (S117B(6) "reasonable to leave" UK) Turkey [2019] UKUT 0072**.

3. Mr Mustafa submitted that it was incorrect of the judge at [17] to state as he had that the appellants had remained without leave whereas they had made applications to regularise their leave which the judge had not taken into account and that they had a right of appeal when trying to regularise their status. He also submitted that the minor child would be 10 in September 2019, although he accepted that the child was 8 at the date of the First-tier Tribunal hearing.

4. Mr Walker submitted that although the judge may not have focussed on the attempts by the adult appellants to regularise their status and at [13] may not have provided additional information in relation to the qualifying child and the powerful reasons why the child should leave, those errors were not material.

Error of Law Discussion

5. In a decision which addressed all the relevant issues, the Judge of the First-tier Tribunal at [13] and [14] considered the life of the qualifying child, accepting that he will have established friendships with his peers and was at primary school but taking into account that much of his private life would still to a significant degree be linked to his parents. There was no error in that approach.

6. The judge was of the view that there was no reason why, with the support of his parents, the third appellant could not adapt to life in Nigeria and took into consideration that the parents were familiar with the culture, customs and language of Nigeria and with parental support would be able to integrate into Nigerian society. Although the judge considered that the third appellant was now 8 years of age, he also took into consideration

that the third appellant was young enough to adapt and integrate. Although the judge took into consideration that he may well experience some difficulties and hardship, it was his ultimate conclusion with the support of his parents he would be able to settle down. The judge also took into consideration that there was no adequate evidence that the first two appellants and the third appellant could not integrate into Nigeria other than the oral evidence of the first two appellants. The judge therefore found that it would be reasonable to expect the child to relocate to Nigeria. The judge also, in conclusion, found that the best interests of the child were in returning to Nigeria with his parents. The judge took into consideration in his general assessment that the adult appellants had immediate family in Nigeria and the judge could see no reason why they could not support the appellants initially if required.

7. There is no material error in the judge's clear findings that it is reasonable for this child to return to Nigeria with his parents. Although the judge may not have specifically set out in his findings the efforts by the appellants to regularise their status (although, at [2], the judge notes that the appellants made applications to the respondent which indicates that he had all the relevant facts in mind) there is no material error in his ultimate finding that the appellants did not have leave to remain and that in terms of the public interest, their status in the UK was 'precarious'.

8. The judge had in mind the powerful reasons test and the judge properly directed himself, at [13], as to that test. Although **KO (Nigeria)** makes it clear that the immigration status or other difficulties experienced by the adults are not a consideration in relation to reasonableness the Supreme Court also confirmed that any consideration of reasonableness must be conducted in the "real world" where it must be considered where the adult appellants will be.

9. I have taken into consideration that the Tribunal must hypothesise that the child in question would leave the United Kingdom even if that is not likely to be the case and ask whether it is reasonable to expect the child to do so. That is exactly what the judge did, including at [14], although I am not satisfied that this is a case where it is not likely that the child will leave. Neither of the adult appellants have leave to remain in the UK and the entire family can return to Nigeria.

10. Although the judge did not have the benefit of **KO (Nigeria)** which postdates the decision of the Tribunal, the approach of the judge mirrors that recommended and the First-tier Tribunal posed the central question of reasonableness. In determining whether it would be reasonable to expect a child to leave the United Kingdom, one must have regard to the fact that one or both of the child's parents will no longer be in the United Kingdom, because they will have been removed by the respondent under immigration powers. That is the extent of the real world consideration which in effect is what Judge Chohan found when he considered at [17]

that public interest requirements meant that the appeal fell to be dismissed and it would not be a disproportionate interference.

11. The decision of the First-tier Tribunal does not contain an error of law and shall stand. The appellants' appeal is dismissed.

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

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

Signed Date: 19 March 2019

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

As the appeal is dismissed I make no fee award.

Signed Date: 19 March 2019

Deputy Upper Tribunal Judge Hutchinson