



IAC-FH-NL-V1

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

Appeal Numbers: AA/07700/2014
AA/07692/2014
AA/07694/2014
AA/07698/2014
AA/07699/2014

THE IMMIGRATION ACTS

**Heard at Stoke
On 12 April 2016**

**Decision & Reasons Promulgated
On 14 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

[A A]

[B A]

[O E A]

[O O A]

[A O A]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss. C. Warren, Counsel instructed by Binas Solicitors Ltd.

For the Respondent: Mr. A. McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge J.D.L. Edwards, dated 10 March 2015, in which he dismissed the Appellants' appeals against the Respondent's decisions to refuse to grant leave to remain on the grounds of family and private life.
2. Permission to appeal was granted as follows:

"It is arguable that the Judge failed to demonstrate that he had considered the best interests of the children as a primary consideration."
3. The first and second Appellants attended the hearing, together with their youngest child.
4. I announced at the hearing that I found that the decision involved the making of a material error of law. I set the decision aside and remitted it to the First-tier Tribunal for rehearing. My reasons are set out below.

Error of law

5. The findings in this decision run to only seven paragraphs, [24] to [30]. Paragraph [30] contains the full extent of the consideration of the best interests of the children who were aged nine, seven, and one year old. It states as follows:

"This decision safeguards the welfare of Appellants B, C & D. They will remain with their parents. Their best interests are to do so, to be brought up and educated in their own culture and to get to know their extended family. Returning them to Nigeria will allow that to happen. The respondent's decision is complaint (sic) with Section 55."
6. I find that not only has the judge not recognised that the best interests of the children should be a primary consideration, given that it is the last matter to which he has turned his attention, but also that he has failed to give adequate consideration to the children's circumstances. There is no detailed consideration of their circumstances at all. I find that this failure to consider the best interests of the children as a primary consideration, and to give adequate consideration to the children's circumstances, is a material error of law.
7. Further, given that the children were born in the UK, that one is nine years old and one is seven years old, there is no consideration of whether it is reasonable to expect them to return as is required by paragraph 276ADE(1)(vi). The judge simply states in paragraph [28] that the Appellants "cannot qualify under either Rule 276ADE or Appendix FM" without any consideration of the requirements of the rules, and without giving any reasons. I find that the failure to give reasons for why the Appellants fail to meet the requirements of paragraph 276ADE, with particular reference to the children, or why the parents fail to meet the requirements of Appendix FM with reference to paragraph EX.1, is a material error of law.

8. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, and having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.
9. At the hearing the Appellants' representative stated that the third Appellant now had British citizenship, and the fourth Appellant had put in an application for British citizenship, although she did not have any evidence of this. Mr. McVeety stated that he would inform the Respondent of this, so that the applications could be looked at again. It was agreed that, if necessary, this could also be addressed in any Case Management Review in the First-tier Tribunal. However, without the evidence, and without the Respondent having carried out the necessary checks, I considered that the appeal was not suitable for disposal on this basis alone.

Notice of Decision

The decision involves the making of a material error of law and I set it aside.

The appeal is remitted to the First-tier Tribunal for rehearing.

Signed

Date 12 April 2016

Deputy Upper Tribunal Judge Chamberlain