Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/29663/2015
IA/30401/2015
IA/30403/2015
IA/30406/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 January 2016	**On 20 February 2018**

Before

UPPER TRIBUNAL JUDGE WARR

Between

M F L (FIRST APPELLANT)
S Q L (SECOND APPELLANT)
A A L (THIRD APPELLANT)
A H L (FOURTH APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mrs H Gore of Counsel, instructed by Waterdenes Solicitors
For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of four citizens of Nigeria. The first appellant was born on 15 October 1983 and is the mother of the remaining appellants born on 14 June 2005, 19 June 2009 and 19 August 2007.

© CROWN COPYRIGHT 2018

2. The appellants applied on 24 April 2015 for leave to remain under paragraph 276ADE(iii) and Article 8 of the ECHR. The applications were refused on 18 August 2015.

3. The first two appellants entered the UK in December 2006 as the wife and child of Mr B R L who was a student in the UK. They had leave from November 2006 until 28 February 2007. An in country application for leave to remain was refused on 22 June 2010. A human rights application was refused on 21 October 2013 and a further application on 27 January 2014 based on family and private life was refused on 11 April 2014.

4. The third and fourth appellants were born in the UK and have made applications for leave to remain in line with those made by the first and second appellants.

5. The respondent noted that the first appellant was no longer in a relationship with Mr B R L although he had contact with the children and maintained them. While the children had resided in the UK for more than seven years the family could return as a unit. Mr B RL had no immigration status in the UK. The children spoke English which was spoken in Nigeria and they could continue their education there. The contact with Mr B R L was in the holidays and this could continue by visits to the UK or Mr B R L could return to Nigeria.

6. The appellants appealed and their appeal came before the First-tier Judge on 26 April 2017. The judge heard evidence from the first appellant and set out her findings and conclusions as follows:

> "9. The starting point is consideration of the best interests of the children and this must be to remain in their family unit, and continue contact with their father, and to remain in their schools because this would afford as little disruption to their lives. None of the children has visited Nigeria since arriving or being born in the UK and only the second Appellant lived in Nigeria but that was up to the age of 1 ½ years and he cannot remember his experience. The children have a limited familiarity with Yoruba but they could speak English in Nigeria. The children are settled in their schools and the second Appellant has settled into Secondary School.
>
> 10. I find the first Appellant to be a credible witness. She told me that now that her former husband is not working he is not able to give much maintenance for the children but she is working in supermarket even though she is not permitted.
>
> 11. The children see their father at weekends at a friend's house because he has no fixed abode. His immigration status is not settled. He came to study accountancy but he did not complete the course.

12. The first witness used to live with her grandmother before she came to the UK and helped her sell food, but the grandmother is no longer able to do this. The first Appellant has a mother and siblings living in Nigeria but they have to look after themselves and she is not really in contact with them.

13. The children are healthy but the first Appellant suffers sciatica and has seen a hospital consultant early this year.

14. It was submitted by Mr. Ume-Ezeoke that the second and third Appellants fall within EX.1 because they had lived continuously in the UK continuously for more than seven years and it is not reasonable for the children to be removed to Nigeria. However, the Appellants do not meet the eligibility requirements and cannot fall within EX. The first Appellant and her husband did not have settled status when the application was made. At the date of the application it was reasonable for the children to return to Nigeria with their mother in the family unit and the father could join them voluntarily, and therefore, the first Appellant did not meet E-LTRPT 2.2 of Appendix FM and the children did not meet E-LTRC 1.6 of Appendix FM.

15. I find they could return as a whole family unit, the father had no immigration status and could return to Nigeria and resume contact with his children, he would be in a better position to provide for them, and there is a home of the grandmother where the Appellants could reside, or the mother or other family members whilst the first Appellant set about obtaining work or starting up her own work preparing and selling food or other goods, which is where her experience lies both in Nigeria and in the UK. There is no suggestion that her sciatica interferes with her ability to work and she is currently working.

16. The Court of Appeal in **AM (Pakistan)** confirmed that the wider public interest is to be included in the consideration of reasonableness under Paragraph 276 ADE (iv) as well as Section 117B (6). The Appellants are overstayers and whilst some applications to regularise their immigration status have been made, when refused the family did not return to Nigeria. Whilst the first Appellant's conduct is less then the conduct of some of the applicants in **MA (Pakistan)**, and she has not committed fraud, the children also do not have any special needs or requirements such that it would not be reasonable for them to return to Nigeria with their mother, and their father may or may voluntarily return with them.

17. I find the first Appellant has not shown that there are very significant obstacles to her integration into Nigeria under Paragraph 276 ADE (vi) because she still has family living there, she lived there for many years,

and she has access in the short term at least to accommodation and she is resourceful, and could go and provide for the family. There is nothing preventing the father of the children from returning voluntarily either. I have taken into account fully how the children have integrated into the UK, have no experience of living in Nigeria and have not visited Nigeria.

I conclude the second and third Appellants have not shown that it would not be reasonable under Paragraph 276 ADE (iv) for them to be returned to Nigeria. I conclude that it is reasonable for the second and third Appellants to be removed from the UK even though they are settled into the UK, and they have not visited Nigeria, they have developed their own lives and integrated into this country, and their father may not return voluntarily. But I have found there are family members to ease re-settlement and the first Appellant is resourceful and can find accommodation and maintain her children. The children speak English and there are schools in Nigeria where English is the language lessons are taught in.

18. Time has moved on and now all three children are qualifying children for the purposes of Section 117B because by the date of the hearing all of them have resided continuously in the UK for more than 7 years, and it is not disputed that the first Appellant has a genuine and subsisting relationship with the second to fourth Appellants. The second Appellant has resided in the UK for twelve years, and the third Appellant ten years. The children have settled into their education, their sporting interests and made their own friends. I place significant weight upon the length of time the children have resided in the UK and the ages of the children, particularly the second Appellant who has now started Secondary School, but is not at a critical stage of his examination process.

19. I have taken into account fully the impact upon the children whose best interests lie in remaining in the UK and enjoying the continuity in their lives. However, whilst they have spent a significant time in their lives in the UK, and for the second Appellant at significant years of age 4 to 13, and whilst I have placed significant weight upon this and his best interests, I conclude that there are strong reasons for concluding that it is proportionate for the Appellants to return to Nigeria as a family unit. I have taken into account the wider public interest as well and when balancing the facts together, the family can return as a unit, the children will be able to continue their studies after a period of adjustment into their new life in a different country and different schooling system."

7. The judge accordingly dismissed all the appeals.

8. There was an application for permission to appeal and permission to appeal was granted by the First-tier Tribunal on 2 November 2017. It was said that at the heart of the grounds was the question whether the First-tier Judge properly considered whether it would be reasonable to expect the three child appellants to leave the UK. The children had resided in the UK for more than seven years. It was arguable that it had not been explained why the public interest in the case outweighed the best interests of the children, the policy permitted children to remain where it would be unreasonable to expect them to leave the UK. It was argued in the grounds that the judge had misunderstood several facts relating to the children.

9. Mrs Gore took as the first points the issue of mistakes of fact as appeared in Ground 4 of the appeal grounds. She focused on what was said at paragraph 15 of the determination where the judge had found that the appellants could reside in the grandmother's home. The appellant had said in paragraph 7 of her witness statement that she had no home to return to in Nigeria with three kids. She had said that she was estranged from her family and had left Nigeria without the consent of her parents to join a partner they had refused to have anything to do with. The judge had found the appellant to be a credible witness. While the judge had rightly referred to the best interests of the children she had not mentioned the witness statement of the second appellant who had said in paragraph 7 of his statement that the little he knew about Nigeria scared him and all his friends were in the UK. He was enjoying secondary school in England. The third named appellant had been granted British citizenship on 15 January 2018. The issue raised in the grounds under Appendix FM was the one of reasonableness. Further it was clear from paragraph 46 of **MA (Pakistan)** that the fact that the children had been here for seven years must be given "significant weight". The issue in the case was reasonableness and the judge had erred in paragraph 14 in relation to EX.1.

10. Ms Ahmad submitted in relation to the points taken on mistakes of fact to the finding made in paragraph 15 about the home of the grandmother where the appellants could reside and had observed in paragraph 17 that the appellant was resourceful and that she had "access in the short term at least to accommodation".

11. In relation to the apprehension of the second appellant about returning to Nigeria it was not incumbent on the judge to refer to every item of evidence and it was not shown that the judge had not had in mind the witness statement of the second appellant. She had referred in paragraph 9 to the fact that none of the children had visited Nigeria since arriving and that only the second appellant had lived in Nigeria but that was up to the age of 1½ and he could not remember his experience. It was to be borne in mind that judges were encouraged to be brief in their reasoning by the Court of Appeal.

12. In relation to the argument based on EX.1 the ultimate question was whether the judge had erred in considering the issue of reasonableness. If there was an error of law it was not material and it was quite clear that the judge had dealt with the issue

of reasonableness in paragraph 17. She had appreciated that the test was one of reasonableness and had taken into account all relevant considerations such as the length of time the family had resided in the UK. In paragraph 18 the judge had taken into account Section 117B and she had in effect taken the appellants' case at its highest. She had noted that the appellant was resourceful and had been working in a supermarket although she had not been permitted to do so and would accordingly be able to maintain the children in Nigeria.

13. In reply Mrs Gore submitted that in paragraph 14 the judge had referred to reasonableness in the context of the date of application. She had failed to remind herself of paragraph 49 of **MA (Pakistan)** – the fact that a child had been in the UK for seven years would need to be given significant weight. There had been no fraud in contrast with **MA (Pakistan)**. The children would be faced with destitution on return.

14. At the conclusion of the submissions I reserved my decision. I remind myself that I can only interfere with the determination of the First-tier Judge if it was materially flawed in law.

15. The determination is succinct but none the worse for that and I have set out the judge's reasoning above. Firstly, I see no basis for the argument that the judge did not have proper regard to the case law to which she refers. It is plain, for example, that she was aware of what had been said in **MA (Pakistan)** about the need to place significant weight to the length of residence of the children in the UK – see paragraph 18 of the determination.

16. Mrs Gore concentrated on the mistake of fact argument. She referred to extracts from the witness statement of the first appellant whom she had found to be a credible witness. I do not find any material inconsistency between the judge's analysis of the evidence before her. The judge was exploring various options in paragraph 15 of her decision about what the family could do on return. As Ms Ahmad pointed out the judge had been fully entitled to find that the appellant was resourceful and it was open to her to conclude that she could provide for the family on return. There would be access "in the short term at least" to accommodation. It was open to her to find that there were family members to ease resettlement. The appellant would be able to find accommodation and maintain her children.

17. I am not satisfied that the judge misdirected herself on the facts and she bore in mind all salient considerations going to the issue of reasonableness and the best interests of the children. Other factual points were put forward in the grounds – for example that the second appellant arrived in the UK at the age of 1 ½ rather than 4 – but these were not developed at the hearing, rightly in my view, and they raise no material error of law.

18. I am not satisfied that the judge's positive credibility finding was inconsistent with her analysis of the evidence. I do not find furthermore that there was any material misdirection on the issue of reasonableness in the context of EX.1. When the determination is read as a whole it is plain and apparent that the judge took full account of the reasonableness of returning the children, not merely at the date of application or the date of the decision but at the date of the hearing.

Notice of Decision

19. The grounds raise no material error of law and this appeal is dismissed.

20. Anonymity direction made.

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 her 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.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed Date 15 February 2018

G Warr, Judge of the Upper Tribunal