IAC-HX-MC/12-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/25158/2014
IA/25162/2014
IA/25165/2014
IA/25168/2014
IA/25172/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 February 2015	**On 12 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE E B GRANT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS STELLA TAIYE UHUO
MISS JULIANA ONYINYECHI UHUO
MASTER SIMON JEROME UHUO
MISS JUDITH OLUCHI UHUO
MASTER JOSEPH CHUKWUEMKA UHUO
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:
For the Appellant: Mr M Shilliday, Senior Presenting Officer
For the Respondent: Mr Orubibi of Georgewills Solicitors

DECISION AND REASONS

The Background to these Proceedings

1. On 2 June 2014 the respondent was refused leave to remain in the United Kingdom. The respondent appealed that decision and her appeal and the linked appeals of her children came before FTTJ Lloyd-Smith on 30 September 2014. In a decision promulgated on 8 October 2014 FTTJ Lloyd-Smith made findings in the following terms:

> "11. When considering the main appellant under FM it was suggested during submissions that given the passage of time and the apparent acceptance by the respondent that the children have now been in the UK for 7 years the main appellant can meet the requirements of R-LTRPT. Whilst 7 years have now elapsed E-LTRPT 2.2 makes it clear that the child of the applicant must have lived in the UK continuously for at least 7 years immediately preceding the date of the application. Clearly this is not the case however, the length of time that the children have lived here is a matter for my consideration. Having decided that the appellant cannot succeed under appendix FM and she cannot succeed under paragraph 276ADE because she has not lived here continuously for 20 years; I have to consider whether it is appropriate to consider Article 8 outside the Immigration Rules. The Court of Appeal in **Haleemudeen [2014] EWCA Civ 558** indicated in paragraph 44 that 'at least in this court, in light of the authorities, it is necessary to find compelling circumstances for going outside the Rules'. Looking at the best interests of the children and the time that they have spent in this country I find it appropriate to conduct such a test outside the Rules. This involves following the step by step approach advocated in the House of Lords in **Razgar [2004] UKHL 27**.
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> 12. Given the length of time that the family have been in the UK I find that the appellant has established a private life since her arrival here. The threshold for engaging Article 8 is not especially high, and I therefore conclude that Article 8 is engaged on the basis of the appellant's private life. The proposed interference with that private life, by the appellant having to leave the country would be in accordance with the law because she cannot satisfy the Immigration Rules in relation to remaining in the United Kingdom. However, I also have to consider whether the interference is necessary and proportionate.
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> 13. The appellant has 4 children whose best interests have to be my paramount concern. I have considered the relevant case law. In **Zoumbas v SSHD [2013] UKSC 74** the court held that a decision maker must evaluate the child's best interests and in some cases these may point only marginally in one, rather than another, direction. At paragraph 35 of **EV (Philippines) and Others [2014] EWCA Civ 874** it was stated that the best interests of children will depend on a number of factors including their age, the length of time that they have been in the United Kingdom, how long they have been in education, the stage that their education has reached, to what extent they have been distanced from the country

to which they are to be returned, how renewable their connection with it may be, the extent that they will have linguistic, medical or other difficulties in adapting to life there and the extent to which the course proposed will interfere with their family life or other rights in this country. The longer the child had been in the UK, the more advanced or critical the stage of his education, the looser his ties with the country in question, and the more deleterious the consequences of his return, the greater the weight that fell into one side of the scales. If it was overwhelmingly in the child's best interests that he should not return, the need to maintain immigration control may well not tip the balance. In **Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 197 (IAC) (Blake J)** the Tribunal held that it is generally in the interests of children to have both stability and continuity of social and educational provision and the benefit of growing up in the cultural norms of the society to which they belong. Lengthy residence in a country other than the state of origin can lead to development of social cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period. It was also noted that seven years from age four is likely to be more significant to a child than the first seven years of life. Very young children are focussed on their parents rather than their peers and are adaptable.

14. Applying the case law to the facts of this case a distinction can be made with the case of **EV**. The children involved in **EV** were born in 2008 and 2011, their education and age would mean that their formative years were not the same as the older children I am considering. The two oldest children in the instant appeal have spent a significant part of their education experience at school in the UK and are at a crucial stage in finalising their qualifications. They are of an age where they will have become integrated into life in this country, have developed strong ties and the older two are at a crucial stage of their education. As a consequence to require them to leave the UK at this stage of their lives would not be proportionate. The younger children have spent most if not all of their lives in this country and reintegration into life in Nigeria would be difficult. It is also apparent from the case law that children should ideally remain with both parents. Whilst their father is in Nigeria it was clear from the evidence that they do not have regular contact with him and it appears that the marriage is over. The main appellant is their primary carer. It follows therefore that finding as I do that the older children's private life will be interfered with if removal occurs, the cases of the appellants are so intrinsically linked that they should remain as a unit and therefore they all should be allowed to remain. In considering this I have taken into consideration the fact that the main appellant has always respected and abided by the immigration laws of this country always obtaining the appropriate visa to enable them to remain. Whilst their continued residence and education in this country has never been guaranteed and should not have been expected, for the reasons set out above, given the passage of time, age and stage of their education removal would not be proportionate."

2. The appellant sought permission to appeal and the grounds of that application are as follows:-

"**1. 'Best interests of the child'**

a) The FTJ states; 'The appellant has 4 children whose best interests have to be my paramount concern' (§13). The SSHD submits that this is wrong in law: the best interests of the children are a primary consideration but not a paramount one.

b) This misdirection is material as it clearly infects the FTJ's approach to the instant appeal and turns the best interests of the children into a trump card, which is also wrong in law.

2. 'Right to education'

a) The FTJ considers that the two oldest children have spent a significant part of their education experience at school in the UK and are at a crucial stage in finalising their qualifications and that requiring them to leave would not be proportionate (§14). Whilst it may be that the children are currently being educated in the UK, the SSHD submits that the As could have no 'future' right, or expectation, to continue that education in the UK. The ability of the children to remain in the UK is dependent upon the compliance of A1 with the provisions of immigration control.

b) In Zoumbas v SSHD [2013] UKSC 74 the Supreme Court distinguished between the 'future right' of a British child to expect to enjoy healthcare and educational services in the UK and a non-EEA national child, who could hold no such expectation;

> 'There is no irrationality in the conclusion that it was in the children's best interests to go with their parents to the Republic of Congo. No doubt it would have been possible to have stated that, other things being equal, it was in the best interests of the children that they and their parents stayed in the United Kingdom so that they could obtain such benefits as health care and education which the decision-maker recognised might be of a higher standard than would be available in the Congo. But other things were not equal. They were not British citizens. They had no right to future education and health care in this country. They were part of a close-knit family with highly educated parents and were of an age when their emotional needs could only be fully met within the immediate family unit. Such integration as had occurred into United Kingdom society would have been predominantly in the context of that family unit. Most significantly, the decision-maker concluded that they could be removed to the Republic of Congo in the care of their parents without serious detriment to their well-being. We agree with Lady Dorrian's succinct

> summary of the position in para 18 of the Inner House's opinion.' [§24]

c) In EV (Philippines) & Ors v SSHD [2014] EWCA Civ 874 the Court of Appeal expressed a similar view as to future entitlement to life in the UK;

> 'On the facts of ZH it was not reasonable to expect the children to follow their mother to Tanzania, not least because the family would be separated and the children would be deprived of the right to grow up in the country of which they were citizens.' [§59]

> 'That is a long way from the facts of our case. In our case none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. If the parents are removed, then it is entirely reasonable to expect the children to go with them. As the immigration judge found it is obviously in their best interests to remain with their parents. Although it is, of course a question of fact for the tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world; [§60] [emphasis added]

d) The SSHD submits, for the reasons set out above, that the FTJ has erred in assessing the proportionality of the decision to refuse the A's application: this represents a fundamental flaw in the overall decision to allow the appeal.

3. 'Section 117'

a) The FTJ's findings and reasons do not disclose proper engagement with the provisions of Part 5A of the Nationality, Immigration and Asylum Act 2002 (i.e.: Section 117). The FTJ concludes that the children have private life, which would be interfered with and that the whole family should allowed to remain in the UK (§14), but does not acknowledge that only limited weight should be afforded to the private life of the As, as per S.117B(5). The family have, at all times, been precariously present in the UK (i.e.: their leave discloses an expiration date): they could hold no legitimate expectation of remaining in the UK.

b) Furthermore, the maintenance of a firm and coherent system of immigration control is in the public interest (S.117B(1) and it was incumbent upon the FTJ to have due regard to that public interest in assessing the rights of the individual As against the wider rights of society. The FTJ's lack of engagement with the provision of S.117 is wrong in law, and renders the decision to allow the appeal as materially unsound.

> For the reasons set out above the FTJ was wrong, in law, to allow the appeal on human rights grounds."

3. A decision on the permission to appeal application was made by FTTJ Grant-Hutchison on 24 November 2014 whereby she found:-

> "It is an arguable error of law for the Judge to (a) assess the best interests of the children as her paramount concern as opposed to a primary consideration; (b) fail to consider that a non-EEA national child has no expectations to continue his/her education in the UK and (c) fail to consider part 5A of the Nationality, Immigration and Asylum Act 2002."

4. Thus the matter came before me at an error of law hearing.

5. Mr Shilliday relied upon the decision of the Court of Appeal in **Singh v SSHD [2015] EWCA Civ 74** and **EV (Philippines) and Others v SSHD [2014] EWCA Civ 874**. Two Lord Justices gave judgments that were complimentary to each other which hand together and form the ratio of the case. At paragraphs 33 and 34 Clarke LJ identifies the best interests of the children as best practice then he deals with the countervailing factors which were numerous. At paragraphs 45 and 46 he found the need to maintain immigration control did outweigh the best interests of the children. What Lewison LJ says about that at paragraph 55 is that there is a requirement to undertake a real world assessment and what that real world assessment must be was identified at paragraph 44 – a rounded assessment of all the circumstances of the case of the best interests of the children are at the forefront of the judge's mind, but with a real world idea of what will be the situation on return and the importance of effective immigration control.

6. Mr Shilliday submitted that the FTTJ in this case failed to make a real world assessment and found **EV** could be distinguished on the facts which is a remarkable thing to say. It could not be distinguished on the facts and certainly not in this case because the principle set out is almost universal. It cannot be right that the FTTJ went on to say that reintegration into life in Nigeria would be difficult because that is not the test applied in Article 8 law and Sedley LJ said so in **VW (Uganda)** in 2009. The children have one primary carer who has no right to be in the United Kingdom and would have no right but for her children and that is not a real world assessment. The errors of law in the decision are material and the decision cannot stand.

7. Mr Orubibi in response said whilst there is case law confirming the use of the word paramount rather than primary this is not tantamount to an error of law because the words paramount and primary can be used interchangeably and the judge used the word paramount which forms the crux of the first ground of appeal. The FTTJ carried out anxious scrutiny of the appellant and her children and came to her conclusion at paragraph 13 that the children's best interests applied and were paramount and the FTTJ was entitled to reach that decision. Even if it is accepted that the judge made an error by using the word paramount the FTTJ's reasons in

coming to that conclusion outweigh the linguistic difficulty or the word used. By applying for permission to appeal the Secretary of State's action negates the best interests of the children. With regard to the second ground which is related to a non-EEA child having no expectation to continue education in the United Kingdom the respondent and her children came in 2007 and legally remained in the United Kingdom until 21 January 2014. Her previous applications had always been approved and granted and paragraph 276ADE applies because the children have lived continuously in the United Kingdom for seven years they can apply to remain in the United Kingdom. Mr Orubibi submitted the FTTJ rightly distinguished **EV (Philippines)** and this was not an error of law. She also considered **Zoumbas** and correctly distinguished both cases. Mr Orubibi submitted that his hands were tied in relation to ground 3 and that he was in difficulties with ground 3.

8. Having heard the submissions from both parties and having considered very carefully the determination I found that the judge had erred in law for the reasons set out by the appellant in the grounds of appeal and in the correct application of case law. In **EV (Philippines)** at paragraphs 58 to 62 Jackson LJ found:

> "58. In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?
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> 59. On the facts of ZH it was not reasonable to expect the children to follow their mother to Tanzania, not least because the family would be separated and the children would be deprived of the right to grow up in the country of which they were citizens.
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> 60. That is a long way from the facts of our case. In our case none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. If the parents are removed, then it is entirely reasonable to expect the children to go with them. As the immigration judge found it is obviously in their best interests to remain with their parents. Although it is, of course a question of fact for the tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world.
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> 61. In fact the immigration judge weighed the best interests of the children as a primary consideration, and set against it the economic well-being of the country. As Maurice Kay LJ pointed out in AE (Algeria) v Secretary of State for the Home Department [2014] EWCA Civ 653 at [9] in conducting that exercise it would have been appropriate to consider the cost to the public purse in providing education to these children. In fact that was not something that the immigration

judge explicitly considered. If anything, therefore, the immigration judge adopted an approach too favourable to the appellant.

62. I can see no error of law which would entitle this court to set aside that decision. For these reasons, in addition to those given by Christopher Clarke LJ, I too would dismiss the appeal."

9. And in **Singh v SSHD [2015] EWCA Civ 74** at paragraphs 63 and 64 in which Lewison LJ found:

"63. The first case is the decision of this Court in MM (Lebanon). The only substantive judgment is that of Aikens LJ (with whom the Vice-President, Maurice Kay LJ, and Treacy LJ agreed). Most of the issues with which the case is concerned are wholly remote from those in this appeal, but in one section of his judgment Aikens LJ had to consider Nagre. In para. 129 he refers to Sales J having said that 'if a particular person is outside the rule then he has to demonstrate, as a preliminary to a consideration outside the rule, that he has an arguable case that there may be good grounds for granting leave to remain outside the rules': that is evidently a paraphrase of the second half of para. 29 of Sales J's judgment. He continues:

> 'I cannot see much utility in imposing this further, intermediary, test. If the applicant cannot satisfy the rule, then there either is or there is not a further Article 8 claim. That will have to be determined by the relevant decision-maker.'

Mr Malik submitted – this being his second ground of appeal in Ms Khalid's case – that this short passage undermined the entirety of Sales J's point about a full separate consideration of article 8 not always being necessary.

64. In my view that is a mis-reading of Aikens LJ's observation. He was not questioning the substantial point made by Sales J. He was simply saying that it was unnecessary for the decision-maker, in approaching the 'second stage', to have to decide first whether it was arguable that there was a good article 8 claim outside the Rules – that being what he calls 'the intermediary test' – and then, if he decided that it was arguable, to go on to assess that claim: he should simply decide whether there was a good claim outside the Rules or not. I am not sure that I would myself have read Sales J as intending to impose any such intermediary requirement, though I agree with Aikens LJ that if he was it represents an unnecessary refinement. But what matters is that there is nothing in Aikens LJ's comment which casts doubt on Sales J's basic point that there is no need to conduct a full separate examination of article 8 outside the Rules where, in the circumstances of a particular case, all the issues have been addressed in the consideration under the Rule."

10. Having heard submissions from Mr Malik on **Ganesabalan** Lewison LJ said at paragraph 66 and 67:

"66. Point (3) in Mr Fordham's summary broadly reflects earlier authorities, though there is a fuller and more authoritative exposition in the judgment of Beatson LJ in Haleemudeen, at paras. 59-61. I would not disagree with either of points (1) and (2); but I am conscious of how practitioners in this field can sometimes seek to exploit even the faintest ambiguity, and I would accordingly wish to make three comments about point (1):

(1) I should emphasise – though it is in truth entirely clear from the full judgment – that Mr Fordham's statement that 'there is always a second stage' does not in any way qualify what Sales J says at para. 30 of his judgment in Nagre. Sales J's point is that the second stage can, in an appropriate case, be satisfied by the decision-maker concluding that any family life or private life issues raised by the claim have already been addressed at the first stage – in which case obviously there is no need to go through it all again. Mr Fordham's point is that that is a conclusion which must be reached as a matter of conscious decision in any given case and cannot simply be assumed. I agree with both points.

(2) The statement that the decision-maker 'must be in a position to demonstrate' that he or she has given the necessary consideration is simply a reflection of the ordinary obligation to record a material decision. If the decision-maker's view is straightforwardly that all the article 8 issues raised have been addressed in determining the claim under the Rules, all that is necessary is, as Sales J says, to say so.

(3) It may not be entirely apt to describe a decision as to whether article 8 requires that an applicant be given leave outside the Rules as an 'exercise of discretion'.

67. In short, neither MM (Lebanon) nor Ganesabalan undermines the point made by Sales J in para. 30 of his judgment in Nagre, which in my view, together with his endorsement of the approach in Izuazu, remains good law."

The Evidence

11. The evidence before the FTTJ and the submissions made thereon is set out in paragraphs 8 to 10 of the decision which I set out below:-

"8. The main appellant confirmed the content of her witness statement and asked that it be adopted as her evidence in chief. The evidence can be summarised: the family arrived in this country in July 2007 when the children were aged 10, 8 and 5. The youngest child was born here. The main appellant has completed a postgraduate diploma in Computing Management and a Master of Science in Computing with IT Management since arriving in the UK. Her children are all being educated here and her youngest son Joseph who is 5 years old and has never been to Nigeria. They have always been self-sufficient and receive support from their extended family. In her evidence the main appellant stated that she had been separated from the other appellants' father since 2010 and whilst they

have not discovered he is in another relationship, has a child and has married again. Her concern was for her children's education which would be disrupted if they returned to Nigeria. Her eldest daughter is in the final year of her A levels and the next oldest daughter is sitting her GCSE examinations during this academic year.

9. Submissions were made by the respondent who said that whilst he had not seen the proof that the family had been here since 2007, if that was correct and the children crossed the 7 year relevant period it was still reasonable to expect them to return with their mother. Doubt was raised as to the intention of the family when they arrived on visit visas as the evidence indicated that due to a robbery at their home none of them wished to leave and they therefore enrolled in school and remained here ever since. The failure to mention on the application form that the marriage was no longer viable was a matter raised and it was said that the contention that the marriage had ended was to bolster the claim and to give a different perspective on their circumstances. It was not accepted that he had remarried. Reliance was placed on the case law and the case of **EV** which states that it is in the children's best interests to return with their parent and 'I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with the parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world' (para 60). The children had mainly been born in Nigeria, been brought up in a Nigerian household and had ever had a legitimate expectation that they would be able to remain in this country. I was also referred to the case of **Zoumbas** in which it was said to not be disproportionate to expect children to return to the country of nationality and the difference here being that the children were not British citizens and therefore would not have a legitimate expectation to have education and medical treatment. To return to a country as a family unit where their father lives and there are other family members was said to not be disproportionate.

10. In response it was submitted on behalf of the appellants that now, as opposed to the date of the application the children have resided in the UK for 7 years and that the decision to remove would disrupt their education. The best interests of the children should be the primary consideration. Looking at the children's ages and experiences in the round it was submitted that it was not reasonable to expect them to leave. The other family members in Nigeria were not known to the children due to their long period of absence. It was submitted that exceptional circumstances exist such that removal would be unjustifiably harsh and not proportionate."

12. At the time the respondent applied for further leave to remain in the United Kingdom none of her three children had lived in the United Kingdom for seven years and whilst seven years had elapsed at the time the FTTJ heard the appeal as she correctly points out E-LTRPT 2.2 makes it clear that the child of the first respondent must have lived in the UK continuously for at least seven years immediately preceding the date of the application and that was not the case before the FTTJ. The first respondent could not succeed under Article 8 under Appendix FM nor could she

succeed under paragraph 276ADE because she had not lived in the United Kingdom continuously for twenty years. Thus none of the respondents could meet the requirements of the Immigration Rules. In assessing the Article 8 appeal as she did the FTTJ erred for the reasons set out in the grounds. The interests of the children are a primary not a paramount consideration in the assessment of the appeal under Article 8.

13. Following **Singh** from which I have set out relevant extracts above there is no need to conduct a full separate examination of Article 8 outside of the Rules, where in the circumstances of a particular case, all issues have been addressed in the consideration under the Rules.

14. I agree with the approach of the FTTJ that this is not a case where all issues have been addressed in the consideration under the Rules not least the youth of the children and the fact that as at the date of hearing the Article 8 appeal the two elder children have now lived in the United Kingdom for more than seven years. The youngest child has known no other life but life in the United Kingdom because he was born here.

15. I therefore find that the children have established a private and family life with their mother and in their education in the United Kingdom with their circle of friends and acquaintances. The respondent's decision is undeniably in accordance with the law and has a legitimate aim which is the maintenance of effective immigration control. The issue for this appeal is whether the decision to return the family to Nigeria is proportionate to the aims to be achieved.

16. In evaluating the proportionality exercise in **Azimi-Moayed and Others (decisions affecting children; onward appeals) [2013] UKUT 197 (IAC)** Blake J held that lengthy residence in a country other than the state of origin can lead to the development of social, cultural and educational ties that it would be inappropriate to disrupt in the absence of compelling reasons to the contrary. He found that seven years from the age of 4 is likely to be more significant to a child than the first seven years of life. Past and present policies and paragraph 276ADE do identify seven years as a relevant period in a child's life.

17. In this case Juliana was born on 31 July 1997 and she is currently 17 years old. Her sister Judith was born on 7 October 1999 and she is currently 15 years of age. Juliana is studying for her A levels and Judith is studying for her GCSE examinations. Joseph was born in 2008 and is currently 6 years old and his brother Simon was born in 2002 and is 12 years old and at secondary school. Juliana has undertaken almost all of her secondary education in the United Kingdom and Judith has completed primary education and commenced secondary education in the United Kingdom and will very shortly sit her GCSE examinations. Most of Simon's education has been in the United Kingdom. Joseph as a young child who is not yet 7 years of age does not fall for the same consideration as his elder three siblings.

18. It is clearly in the best interests of the children to remain with their mother, the first respondent. It is also in the best interests of the children that their education in the United Kingdom is not disrupted. But in a real world assessment of the best interests of the children it must be conducted against the background which is that the first respondent their mother has no right to remain. Thus the ultimate question arises which is, is it reasonable to expect the children to follow their mother to Nigeria.

19. As in **EV (Philippines)** none of the family is a British citizen. None has the right to remain in this country. If the first respondent is removed and their father is already in Nigeria, then it is entirely reasonable to expect the children to return with their mother. Although it is in the best interests for the elder three children to continue their education in the United Kingdom I find that the benefit of being educated at public expense in the United Kingdom does not outweigh the benefits of the children of remaining with their mother. It was necessary for the FTTJ to consider the cost to the public purse in providing education to the children and that was not something that the FTTJ considered.

20. Therefore in carrying out the balancing exercise on proportionality the factors in favour of the three elder children are that they have undertaken the main part of their education in the United Kingdom. The eldest child is about to complete her A levels, the second eldest is about to complete her GCSE examinations, the third child has had almost all his education to date in the United Kingdom. Unlike his elder sisters he has not had the benefit of education in Nigeria before he came to the United Kingdom.

21. In favour of the respondents the interests of immigration control outweigh the best interests of the children, their continued education in the United Kingdom is a significant expense on the public purse, their mother has no right to remain in the United Kingdom and the Immigration Rules are not met by the appellants which indicates where the exercise of discretion should lie in an Article 8 balancing exercise. Their father and the rest of their extended family are in Nigeria. It is reasonable to expect the children to accompany their mother to Nigeria where she can settle them into life and education there. Nigeria is not a Third World country, it does provide an education for its citizens and there is university education available for the children should they wish to avail themselves of a place at university in Nigeria.

22. All in all the factors in favour of the Secretary of State do weigh against the right of the family to remain in the United Kingdom and having found the judge erred in law by finding the interests of the children were a paramount consideration which infected the exercise of her discretion on proportionality, the decision of the First-tier Tribunal is set aside and I hereby remake the decision by dismissing the appeal.

Summary

The decision of the FtTJ is set aside

I remake the decision by dismissing the appeals.

Anonymity

The FtTJ did not make an anonymity direction , no anonymity direction is made.

Signed 10 March 2015

Deputy Upper Tribunal Judge E B Grant

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeals and therefore there can be no fee award.

Signed 10 March 2015

Deputy Upper Tribunal Judge E B Grant