Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers IA/31001/2014
IA/31002/2014
IA/31003/2014
and IA/31004/2014

THE IMMIGRATION ACTS

Heard at Field House
On 15th July 2015

Decision and Reasons Promulgated
on 10th August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

I J O
K C O
T E O
D O O
(ANONYMITY DIRECTION MADE)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Olawanle (Solicitor, Del & co, Solicitors)
For the Respondent: Mr E Tufan (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellants are a family from Nigeria. The first 3 Appellants arrived in the UK on visit visas in 2004, the fourth Appellant was born in the UK in 2005. Having made unsuccessful applications to remain in the UK and

then failing to leave the Appellants made a further application on the 13th of August 2012. That application was refused for the reasons given in the Refusal Letters of the 22nd of July 2014. These proceedings follow from that refusal and the dismissal of the Appellants appeals by the First-tier Tribunal.

2. It is not disputed that the Appellants have lived in the UK continuously since their arrival and the birth of the fourth Appellant. Accordingly it follows that the children have lived in the UK for more than 7 years. The applications were refused in line with paragraph 276ADE and appendix FM as they stood after the 8th of July 2012.

3. The appeals were heard by First-tier Tribunal Judge Clayton at Taylor House on the 26th of November 2014 and dismissed for the reasons given in the decision promulgated on the 9th of January 2015. It was found that the adult Appellants had shown complete disregard for the rules and had delayed in making applications in the hope that the position of the children would assist them (as a "trump card", paragraph 23) and that they had used visit visas as a means of entering the UK (paragraph 27). It was found that the removal of the Appellants would be proportionate.

4. The Appellants sought permission to appeal to the Upper Tribunal in grounds of the 9th of January 2015. These were considered by Judge Brunnen on the 25th of February 2015. He granted permission on the basis that it was arguable that the Judge had failed to apply the correct version of paragraph 276ADE and had not considered the application of HC760. He also considered that it was arguable that insufficient consideration had been given to the interests of the children.

5. Before the hearing I looked at the history of paragraph 276ADE and tried to ascertain the history of its amendment. The only reference I could find at that stage in Phelan, (9th edition, 2015) at page 807 was to HC760, the note to the paragraph stated that the amendment to 276ADE1(iv) was to apply from the 13th of December 2012 subject to savings for applications made before that date.

6. On the basis that that was correct, and neither of the representatives was able to point to any other provision that might have been relevant I indicated at the hearing that the appeal would be allowed. Having reserved the decision and reasons other cases were then heard and also reserved.

7. Having risen and conducted further enquiries I became aware of the terms of HC 820. This has the effect of amending the amendment set out in HC 760 and removed the saving provisions for applications made before the 13th of December 2012. By the terms of HC 820 the amended to all applications, irrespective of the date on which they had been made. The amended version of paragraph 276ADE(iv) reads "[the applicant] is under the age of 18 and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable

to expect the applicant to leave the UK;" This applies to all decision irrespective of the date of the application under consideration.

8. It follows from the foregoing that the amended form of paragraph 276ADE (iv) applied to the decisions in these appeals and that the argument that the Judge applied the wrong version of paragraph 276ADE is unsustainable. Accordingly on that basis there is no error in the decision whereby the Judge applied paragraph 276ADE in its amended form.

9. Directions were sent to the Appellant and the Home Office setting out the correct legal position on the 17th of July 2015. In those directions they were invited to make written submissions with regard to the manner in which the appeal had been considered by the Judge in relation to the rules. The Appellants representatives responded by the 21st of July 2015, I have received nothing from the Home Office. The delay since that date has been due to my being on annual leave and I apologise for the delay.

10. The remaining ground of appeal was to the effect that the Judge had not given sufficient consideration to the best interests of the children and that the decision with regard to their removal was unsustainable. The factors to be considered whether under paragraph 276ADE(iv) or EX.1 of Appendix FM are essentially the same, that where a child has spent 7 years in the UK whether it would be reasonable to expect them to leave the UK.

11. It is clear from the cases of EV (Philippines) [2014] EWCA Civ 874 and Zoumbas v Secretary of State for the Home Department [2013] UKSC 74 that a poor immigration history on the part of the Appellants, and in a situation involving children that must mean the parents directing what takes place, is directly relevant to the question of whether it is reasonable to expect a child to leave the UK.

12. Although unstated in the rule there must be an expectation that in the time that a child has been in the UK they will have made friends and if they have attended school will have received education and that removal may disrupt what has been established and has taken place. The added requirement that the removal would have to be shown to be unreasonable I take to mean that there must be something more than the usual ties or life than would be expected in the circumstances and that these must be such that, in the light of the immigration history and the statutory provision that "The maintenance of effective immigration controls is in the public interest.", section 117B of the 2002 Act.

13. The Judge had found that the first and second Appellants had used visit visas to enter the UK and that they had no intention of leaving and had chosen to remain unlawfully and precariously and that they had been a burden on the tax payer. The Judge noted the claim made about the abilities of the third and fourth Appellants but observed, in line with EV (Philippines), that it was not the obligation of the UK educate them. She also observed that they would return to Nigeria where they could re-establish themselves. It was found that the only family life was as a unit

and there would be no interference with that as they would be removed together.

14. It is not an error for a Judge to omit to mention the provisions of section 55 of the 2009 Act, what is necessary is that the Judge should have given substantive consideration to the best interests of the children. I also note that the burden is on the Appellants to show what those interests are and to provide evidence which would show that, taking the best interests into account, removal would be unreasonable having regard to the Appellants immigration history.

15. The Judge referred to the position of the children and the life that had been established in the time that they have been in the UK and the fact that their time here had been almost entirely unlawful. Read as a whole it is clear that the Judge had regard to the relevant principles, including Razgar [2004] UKHL 27, and on the evidence that was presented was entitled to find that Appellants had not shown that removal would be unreasonable and for the reasons that were given. It may be correct, as the Appellants' representative observed, that the immigration history of the Appellants in Zoumbas, was particularly poor but the immigration history of these Appellants was hardly exemplary.

16. The principal complaint, that the wrong version of paragraph 276ADE was applied is wholly misconceived and without merit. The other complaint that the Judge had not considered the issue of the reasonableness correctly within the framework of article 8, section 55 and Razgar is also without merit. The decision was brief and to the point and gave adequate reasons for the findings made. The decision of the First-tier Tribunal did not contain an error of law and the decision stands as the disposal of the appeals in this case.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

In dismissing the appeals I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)
Dated: 4th August 2015