



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-000659
UI-2024-000660
UI-2024-000661
UI-2024-000662
First Tier Number: HU549502022
HU/54951/2022
HU/54952/2022
HU/54953/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of September 2024

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**UCHECHUKWU ANTHONY AGUKWE
CHIZOBA LINDA DIRIBE
ZINACHIMDI KALIYAH AGUKWE
ZIKACHIRD KENDRA AGUKWE
(no anonymity order made)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr James, Counsel instructed by Drummond Miller LLP
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

Heard in Edinburgh on the 4th September 2024

DECISION AND REASONS

1. The Appellants are all nationals of Nigeria. They are respectively a father born on the 20th February 1986, a mother born on the 12th April 1988, and two daughters born in the UK, on the 11th July 2016 and the 5th August 2018. They

appeal with permission against the decision of the First-tier Tribunal (Judge A.M.S. Green) to dismiss their appeals on human rights grounds.

2. By the date of the hearing before the First-tier Tribunal the Third Appellant had lived in Scotland for seven years. It was common ground that this was a matter of some relevance to the appeal, by operation of what was then paragraph 276ADE(1)(vi) of the Immigration Rules and s117B(6) Nationality Immigration and Asylum Act 2002. She was a 'qualifying child', and the question was whether it would be "reasonable" to expect her to leave the UK. If it was not, then her appeal fell to be allowed, and after it those of her parents and sisters.
3. This appeal is brought on the grounds that it is not at all clear from Judge Green's decision whether this was the test that he had in mind when he dismissed the appeal. Although the First-tier Tribunal's decision alludes to the correct test of 'reasonableness' at its paragraphs 8, 9, 20 and 34, the Tribunal also expressly directs itself to consider whether there were "insurmountable obstacles" to the family relocating to Nigeria at its paragraphs 5, 15 and 32.

Findings

4. The crux of this appeal is that the Tribunal misdirected itself about what test the Appellant family had to make out in order to succeed in their appeals. I am satisfied that the Tribunal did misunderstand what it was being asked to determine. See for instance at its paragraph 5:
 5. The appellants assert a right to remain on Article 8 grounds on the basis that they would face "insurmountable obstacles" to the continuation of their family and private life in Nigeria and that, in the alternative, removal to Nigeria would result in unjustifiably harsh consequences.
5. The test at EX.1 of the Immigration Rules had no role to play in this appeal, since neither of the adult Appellants has leave to remain in the UK. The only questions to be answered were a) whether it would be reasonable to expect the qualifying child to leave, and if that question were to be answered in the affirmative, b) whether in all the circumstances it was nevertheless disproportionate to expect this family to leave the UK. The repeated references to 'insurmountable obstacles', an altogether different test, leaves me with no confidence that the Tribunal understood its task.
6. It is correct to say that as well as making findings about 'insurmountable obstacles' the Tribunal also makes this short assessment at its paragraph 34:
 34. Although the third appellant has lived in the United Kingdom for seven years, it would be reasonable for her to relocate to Nigeria with the rest of her family. Her speech and language issues can be treated by exercises recommended by Ms Christie anywhere. Having read the decision letter, Nigeria has a functioning healthcare system including speech and language

therapy resources. It is in her best interest to relocate with her family.

7. Insofar as this might be said to be an application of the correct test, saving the decision from reduction, I am satisfied that this is not the case. The Tribunal did consider the relevance of the Third Appellant's speech and language difficulties but singularly failed to consider the central question at the heart of the test: *her* private life. This is a child born and brought up in Aberdeen, with friends, interests and a school life which she enjoys apart from her parents and sister. There is nothing in the decision to satisfy the reader that these matters were considered when assessing whether it was reasonable to expect her to leave all this behind.
8. Given the extensive fact finding required, and the failure of the First-tier Tribunal to consider this appeal within the correct framework I am satisfied that fairness requires that this appeal be redetermined in the First-tier Tribunal.

Decisions

9. The decision of the First-tier Tribunal is set aside.
10. The decision in the appeal will be remade by differently constituted First-tier Tribunal
11. There is no order for anonymity.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
4th September 2024