



IAC-FH-AR-V1

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

Appeal Numbers: IA/13760/2014  
IA/13761/2014

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**Decision and Reasons  
Promulgated**

**On 29<sup>th</sup> October, 2014  
Signed 17<sup>th</sup> November, 2014**

**On 19<sup>th</sup> November 2014**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**OLUWABUKOLA ELIZABETH JESSE  
OLUWABUKOLA MICHAEL OYEMI**

Respondents

**Representation:**

*For the Appellant: Mr Diwnycz, a Home Office Presenting Officer*

*For the Respondent: Mr A Pretzell, Counsel*

**DECISION AND REASONS**

1. The appellant in this appeal is Secretary of State for the Home Department and I shall refer to her as being the claimant. The respondents are both Nigerian citizens, and mother and son respectively. The first respondent was born on 14<sup>th</sup> June, 1975, and appears to have entered the United Kingdom in April 2000. The second named respondent was born in the

United Kingdom on 8<sup>th</sup> July, 2002. They both made application to the appellant asserting that their removal from the United Kingdom would breach their rights under the 1950 the European Convention for the Protection of Human Rights and Fundamental Freedoms. The claimant was not satisfied that the respondent's rights would be breached by their removal and on 28<sup>th</sup> February 2014, decided to remove the respondents as persons subject to administrative removal under Section 10 of the 1999 Act.

2. The respondents appealed this decision and their appeal was heard by First-tier Tribunal Judge Frankish at Bennett House on 27<sup>th</sup> June 2014. In his determination he recognised that the best interests of the child must be a primary consideration. He noted that the first named respondent came to the United Kingdom in 2000, intending to abuse the immigration state and he noted that she has done so ever since. The judge was clearly perplexed and could not understand why the appellant considers it worth opposing a third appeal from the respondent when the claimant had done nothing whatsoever to enforce her two previous successful appeals.
3. The judge was well aware of the fact that the first respondent had abused the immigration system. Nonetheless he found that it is in the best interests of the second named respondent to remain in the United Kingdom where he may possibly be saved from potentially very severe lameness whereas were he to be removed to Nigeria he would not. The best interests of the second named respondent also involved his mother, the first respondent, remaining with him. He allowed both appeals.
4. The claimant challenged the decision on the basis that EX.1 of Appendix FM of the Immigration Rules is not freestanding and that the application should be refused under s.LTR1.6, because the presence of the first named respondent in the United Kingdom was not conclusive to the public good. because of her conduct making it undesirable to allow her to remain in the United Kingdom. The basis for that is the claim that she made a false asylum claim in the name of someone other than her own.
5. For the respondents Mr Pretzel pointed out that reliance was now being placed upon s. LTR1.6 when in fact it had not been raised by the claimant in the Reasons for Refusal Letter of 24 February 2014. Mr Diwnycz conceded that the issue was not raised earlier and conceded that as a result the determination did not contain any error of law. I am grateful to him. In making his decision First-tier Tribunal Judge Frankish did not err in law and his decision shall stand.

**Richard Chalkley**

Upper Tribunal Judge Chalkley

**17<sup>th</sup> November, 2014**