



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/21323/2013

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 13<sup>th</sup> February 2014

Determination Promulgated  
ON 18<sup>th</sup> March 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS ABOSEDE REMILEKUN ARIYO  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mrs C Brewer, Home Office Presenting Officer  
For the Respondent: Mr T Hussain, of Counsel

**DETERMINATION AND REASONS**

1. In this appeal for the sake of clarity I shall refer to the Secretary of State for the Home Department as “the Respondent” and Miss Abosedede Remilekun Ariyo as “the Appellant”.
2. The Appellant is a citizen of Nigeria born 24<sup>th</sup> November 1983. She first entered the United Kingdom in May 2008 with entry clearance as a visitor. On 18<sup>th</sup> July 2010 she gave birth to her daughter Annabel, in London. Annabel is a German citizen. This is

because of her father, Mr Ajulo, with whom the Appellant formed a relationship, is a citizen of Germany exercising Treaty rights in the UK.

3. On 12<sup>th</sup> February 2012 the Appellant applied for further leave to remain in the United Kingdom on the basis of her private life. The Respondent refused that application having given consideration to the Appellant's family life under Article 8 and Appendix FM and EX1 of the Immigration Rules. Following that consideration the Secretary of State decided that the Appellant should be removed by way of directions.
4. The Appellant appealed that decision to the First Tier Tribunal (Judge Dickson) which, in a determination dated 9<sup>th</sup> December 2013, allowed the appeal. The Respondent now appeals with permission to the Upper Tribunal.
5. Before me Mrs Brewer appeared for the Respondent and Mr Hussain, for the Appellant. Mr Hussain conceded that the Judge had materially erred, for the reasons outlined in the grant of permission. He accepted that the Judge had misapplied paragraph EX1. He also accepted that in his consideration of that provision, the Judge had omitted to consider whether the requirement for the child to be a British citizen or to have lived in the UK continuously for at least seven years had been satisfied (in paragraph 31 of the determination).
6. That concession having been made both representatives agreed that the determination could not stand; nor could any of the findings of fact be preserved as the First-tier Tribunal Judge had adopted a wholly erroneous approach.
7. It was agreed by the parties that a further hearing must now take place. Mr Hussain advised that Mr Ajulo would now wish to attend and give evidence. That evidence would go to the heart of the Article 8 claim. The Appellant would also give oral evidence.
8. I canvassed with the parties whether this matter should remain in the Upper Tribunal. On reflection however, given that none of the findings of fact may stand and the need to make new ones, the appropriate course is to remit this appeal to the First-tier Tribunal for that Tribunal to remake the decision.

## **DECISION**

9. The determination of the First-tier Tribunal which is dated 9<sup>th</sup> December 2013 contains errors of law such that it falls to be set aside. The appeal will be remitted to the First-tier Tribunal (not Judge Dickson) to remake the decision.

No anonymity direction is made

**Signature**  
Judge of the Upper Tribunal

**Dated 18<sup>th</sup> March 2014**