Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/18208/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24th March 2015	**On 31st March 2015**

Before

MR JUSTICE CRANSTON
MR R C CAMPBELL, DEPUTY JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS OLUBUSOLA QUEEN ADESUYI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan (Senior Home Office Presenting Officer)
For the Respondent: Mr S Osifeso (Legal representative)

DECISION AND REASONS

1. In a decision promulgated on 18th September 2014, First-tier Tribunal Judge Majid ("the Judge) allowed the appeal of the respondent, Ms Adesuyi, brought in response to the appellant's decision to remove her from the United Kingdom under section 10 of the Immigration and Asylum Act 1999. That decision, contained in IS.151A Part 2, was made on 11th May 2013.

2. The respondent's case was advanced substantially on the basis that her removal to Nigeria would breach her rights under Article 8 of the Human Rights Convention, in

the light of family life with her daughter, a British citizen. In allowing the appeal, the judge concluded, at paragraph 26 of the decision, as follows:

> "I am persuaded that (the respondent) merits the benefit of the Immigration Rules, HC 395 (as amended) as well as the Articles of the ECHR."

3. In seeking permission to appeal, the appellant contended that the judge's findings were wholly inadequate as it was not clear from the decision which rule the appellant's appeal had been allowed under. Secondly, the judge had not taken into account section 117B of the Nationality, Immigration and Asylum Act 2002, brought into effect by the Immigration Act 2014. In this context, there was no assessment of whether or not it would be reasonable to expect the respondent's child to leave the United Kingdom. Taking into account the child's young age, presently 4 years, the Secretary of State would submit that it would be reasonable for the respondent and her child to return to Nigeria together.

4. Permission to appeal was granted on 10th November 2014. In directions served shortly thereafter, the parties were advised that they should prepare for the forthcoming hearing on the basis that if the decision of the First-tier Tribunal were set aside, any further evidence that the Upper Tribunal might need to consider if it decided to re-make the decision could be considered at the hearing.

5. Mr Tufan relied upon the written grounds in support of the application for permission to appeal. The judge had simply not addressed the pertinent issues. It was not clear from the decision why the appeal had been allowed. The judge referred broadly to the Human Rights Convention but there was no adequate analysis.

6. In response, Mr Osifeso said that although it was apparent that the judge made no mention of particular rules in allowing the appeal, this aspect was subsumed within the decision. At paragraph 3, the judge had expressly borne in mind the rules and perhaps had not deemed it necessary to go further. Similarly, the decision showed that he had the provisions of the Immigration Act 2014 in mind, having mentioned them in the same paragraph.

7. Having heard from the representatives, we concluded that the decision of the First-tier Tribunal should be set aside, as it contained material errors of law. In particular, the judge failed to identify which rule or rules he had in mind in allowing the appeal and the decision contained no adequate human rights assessment. The very brief mention of the rules and the Immigration Act 2014 in paragraph 3 of the decision is insufficient and there is nothing in the following paragraphs showing how the judge reached his conclusion that the appeal fell to be allowed. At paragraph 17, there is a brief mention of section 55 of the Borders, Citizenship and Immigration Act 2009 ("the 2009 Act"), and of the best interests assessment which is required. Although the judge reminded himself in the following paragraphs of several of the relevant authorities, there is nothing to show how he has applied the law to the particular facts in the appeal before him. The conclusion reached at paragraph 26, set out

above, is unaccompanied by reasons. We allow the Secretary of State's appeal and set aside the decision of the First-tier Tribunal.

Re-making the Decision

8. We drew the attention of the representatives to the extent of the documentary evidence before us, concerning the decision under appeal. There were copies of Form IS.151A Part 2, the removal decision itself, and Part 1 of the same form, bearing the same date, giving notice to Ms Adesuyi (hereafter "the claimant") of liability to removal. In this document, there appeared a "specific statement of reasons", in which she is described as an illegal entrant who had admitted to an Immigration Officer that she entered the United Kingdom using an alias and that in a later application for leave to remain in her true identity, she failed to disclose her earlier entry in a false identity. The evidence before us did not include a letter giving any further reasons for the removal decision and Mr Tufan confirmed that there was no other letter.

9. Mr Osifeso said that the Secretary of State ought to have made a best interests assessment in making the decision, in the light of JO and Others (Section 55 duty) Nigeria [2014] UKUT 00517 (IAC). The reasons given for the removal decision made no mention of the child at all. Outside the section 55 duty, the claimant was assisted by guidance on the application of EX.1., and by paragraph 7 of that guidance in particular. Mention was made there of the judgment of the CJEU in Zambrano (C-34/09), given effect in regulation 15A(4A) of the Immigration (European Economic Area) Regulations 2006 (as amended) ("the Regulations"). Mr Tufan said that the Regulations put in issue whether the child would be unable to remain in the United Kingdom, should her mother be removed. The judgment of the Court of Appeal in AJ (India) [2011] EWCA Civ 1191 showed that the Tribunal might in some circumstances be seized of the section 55 issue, where a decision maker had failed to comply with the duty.

10. In our judgment, the reasons contained in Form IS.151A Part 1 fall far short of what is required as the focus is entirely upon the claimant herself. There is no mention of her child at all. There is nothing to show that the Secretary of State considered the circumstances of the family as a whole before making the removal decision. In these circumstances, we conclude that the guidance given by the President of the Upper Tribunal (IAC) in JO and Others should be applied. The reasons given in Form IS.151A Part 1, containing no best interests assessment, show that the Secretary of State has failed to discharge the duties imposed by section 55 of the 2009 Act. As a result, the removal decision is not in accordance with the law. The claimant awaits a lawful decision from the Secretary of State, in which the circumstances of her child have been taken into account and we allow the appeal on this basis.

11. We emphasised to Mr Tufan that we could see no reason why the Secretary of State should not proceed to make a decision, in the light of our judgment, without delay. The circumstances of the claimant and her child might all be taken into account in early course.

DECISION

12. The decision of the First-tier Tribunal having been set aside, it is remade as follows: The appeal is allowed.

Signed Date

Deputy Upper Tribunal Judge R C Campbell

ANONYMITY

There has been no application for anonymity in these proceedings and we make no direction on this occasion.

Signed Date

Deputy Upper Tribunal Judge R C Campbell

TO THE RESPONDENT
FEE AWARD

No fee has been paid or is payable in these proceedings and so there can be no fee award.

Signed Date

Deputy Upper Tribunal Judge R C Campbell