



IAC-FH-NL-V1

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

Appeal Number: IA/34928/2014
IA/34936/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 August 2015**

**Decision & Reasons Promulgated
On 21 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

**THUNKU PIGERAN OUSMAND
SAFOORAH AYAAN OUSMAND
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. These are the appeals of Mr Thunku Pigeran Ousmand and his daughter. Their appeals were dismissed by First-tier Judge Majid on 1 April 2015. They sought permission to appeal and Upper Tribunal Judge Martin granted permission on all grounds.
2. The first ground related to a procedural irregularity. It is asserted in the grounds of appeal that at the hearing before the First-tier Tribunal ("FtT")

the presenting officer conceded that following *JO and Others (section 55 duty) Nigeria [2014] UKUT 00517 (IAC)* the Respondent's decision was unlawful as it did not consider section 55 of the Borders, Citizenship and Immigration Act 2009. The FtT did not remit the case back to the Respondent but purported to refuse what was perceived to be the Respondent's adjournment request.

3. At the hearing before me Mr Jarvis produced a letter from the Home Office to the Upper Tribunal dated 16 June 2015 which states that the Respondent does not oppose the Appellants' application for permission to appeal as set out at paragraph 1 of the grounds. The letter then refers to the Presenting Officer's minute from the hearing before the FtT which states:

"I supported Counsel in her preliminary application that the absence of an Article 8 assessment and a Section 55 assessment made the decision under appeal not in accordance with the law."

4. The letter then invites the Upper Tribunal to determine the appeal, remitting the matter to the respondent for consideration. The letter dated 16 June 2015 was not on the Court file. The Appellant's representatives did not attend the hearing. On the basis of the letter and the Presenting Officer's minutes Mr Jarvis invited me to set the decision aside, allowing the appeal as the Secretary of State's decision was not in accordance with the law in order that the she re-make her decision.
5. In the light of the Respondent's letter and the Appellant's grounds of appeal, I find that it was conceded by the Secretary of State before the FtT that the decision letter did not contain an Article 8 assessment and an assessment under section 55. There is no reference to this concession in the decision of the FtT. I find that the FtT committed a procedural irregularity in failing to record or act on this concession. The FtT manifestly did not subject the Secretary of State's decision to the kind of analysis required by *JO and Others (section 55 duty) Nigeria [2014] UKUT 00517 (IAC)*. Neither the section 55 duties nor the guidance are set out in the determination and the FtT failed to consider whether the Secretary of State had complied with either duty. The FtT should have concluded that the Secretary of State's had failed to discharge the duties imposed by section 55 to have regard to the need to safeguard and promote the welfare of the children concerned and to have regard to the statutory guidance. This was a fundamental error of law.
6. I therefore set aside the decision of the First-tier Tribunal because it was not in accordance with the law and the matter remains outstanding before the Secretary of State for determination.

Decision

7. I conclude that the decision of the FtT is infected by material errors of law. Accordingly:

- (i) I set aside the decision under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.
- (ii) I re-make the decision in this forum, in accordance with section 12(2)(b)(ii). I allow the appeal to the limited extent that the decision is not in accordance with the law and the Appellant awaits a lawful decision from the Secretary of State.

8. It will now be incumbent on the Secretary of State to re-make the decision in accordance with this judgment.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

There was no application for anonymity and no direction is required on the evidence before me.

Signed

Date

Deputy Upper Tribunal Judge L J Murray