



IAC-HW-MP-V1

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

Appeal Number: IA/41182/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9th July 2015**

**Decision & Reasons Promulgated
On 11th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KATE TAIWO AKINDELE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Miss Fijiwale, Home Office Presenting Officer

For the Respondent: No representation

DECISION AND REASONS

1. The Appellant in these proceedings is the Secretary of State, however for convenience I shall now refer to the parties as they were before the First-tier Tribunal.
2. The Appellant is a citizen of Nigeria, born on 24th December 1973. She appealed against the decision of the Respondent dated 30th September 2014 refusing her application based on her family and private life in the United Kingdom under Article 8 of ECHR. Her appeal was heard by Judge of the First-tier Tribunal R L Head-Rapson on 13th February 2015. The

appeal was allowed on human rights grounds in a determination promulgated on 31st March 2015.

3. An application for permission to appeal was lodged by the Respondent and permission was granted by Judge of the First-tier Tribunal Martin on 2nd June 2015. The permission states that the judge may have erred in that, despite quoting the law and applicable Immigration Rules at great length, she has failed to consider them or explain why it is that a mother whose children are permanently in care, due to her mistreatment of them and who has supervised contact only four times a year, should succeed on Article 8 grounds.
4. There is no Rule 24 response.

The Hearing

5. The Appellant was not represented and did not appear for the error of law hearing.
6. The Presenting Officer submitted that the cases of **SS (Congo) and Others [2015] EWCA Civ 387** and **Mrs Ronak Maniyka Dube [2015] UKUT 90 (IAC)** apply.
7. The Presenting Officer refers to paragraphs 60 to 63 of the First-tier Judge's determination. In these paragraphs the judge deals with the Immigration Rules but she makes no finding as to whether the terms of the Rules have been satisfied or not. The appellant's stand is that the terms of the Rules have been satisfied.
8. At paragraph 65 the judge considers Article 8 outside the Rules referring to the case of **Razgar [2004] UKHL 27** and other relevant cases.
9. The Presenting Officer submitted that it is necessary to consider whether the Rules have been satisfied before considering the claim outside the Rules. I was referred to the said case of **SS (Congo)** at paragraph 44. This refers to Article 8 outside the Rules and the public interest question. She submitted that the judge has identified the Rules. She submitted that it is only if the terms of the Rules cannot be met that it has to be considered whether there is a good arguable case outside the Rules. She submitted that there is an error of law in the judge's determination as she has not made a finding as to whether the Rules have been satisfied.
10. The Presenting Officer submitted that with regard to proportionality the judge has not properly considered public interest. At paragraph 33 in the said case of **SS (Congo)** it is stated that there must be compelling circumstances for a claim to succeed on Article 8 grounds outside the Rules. She submitted that the judge made an error of law because this issue was not dealt with.
11. The Presenting Officer submitted that in this case it was not appropriate to consider the claim outside the Rules. The application was refused on

suitability grounds. It was found that it was not conducive to the public good for the Appellant to remain in the United Kingdom. The Appellant was arrested on suspicion of child cruelty and cautioned and her children were removed from her. The children have since been granted Registration of Minors which gives them UK citizenship as there is no chance of them being returned to their mother. They will remain in long-term foster care until the age of 18 and the Appellant is not allowed any unsupervised access to them. She submitted that the Appellant has failed to meet the suitability threshold.

12. The Presenting Officer submitted that it is clear that the Appellant is not actively involved in the upbringing of her children. There is no evidence to show that she has any involvement.
13. With regard to the best interests of the children the Presenting Officer submitted that the judge in this case has found that this is the trump card at paragraph 73 of the determination. The judge states that the children's best interests are of course the paramount consideration in the Family Court. The Presenting Officer submitted that at paragraph 39(iv) of **SS (Congo)** it is stated that the fact that the interests of a child are in issue, does not provide a trump card for positive action to be taken by the State. In the field of Article 8(1), a child must not necessarily have their application acceded to. She submitted that the best interests of the children are a primary consideration not the primary consideration and the judge has not considered the fact that this Appellant has mistreated her children.
14. The Appellant's evidence is that she could not afford to visit the children if she was removed to Nigeria but she produced no evidence about this. There is also no evidence about the possibility of employment for her in Nigeria.
15. I was referred to Part 5A of the Nationality, Immigration and Asylum Act 2002 as amended by the Immigration Act 2014 and Section 117B thereof. This is referred to by the judge at paragraphs 76 and 77. The Presenting Officer submitted that in this case the children are in care. They do not require to leave the United Kingdom if the Appellant is removed. She submitted that the judge has not given enough weight to the public interest in effective immigration control.
16. The Presenting Officer submitted that the judge has given no consideration to the Appellant's private life situation. The appellant is in the United Kingdom illegally and is not financially independent. She is a burden on the state. The Presenting Officer submitted that this has to be considered and the judge has not done this. The Presenting Officer submitted that there are material errors of law in the determination relating to the Article 8 aspect of the Immigration Rules and also Article 8 outside the Rules.

17. I was asked to overturn the judge's decision and dismiss the Appellant's appeal.

Decision and Reasons

18. This is an error of law hearing.
19. The judge has made no decision as to whether the terms of the Immigration Rules have been satisfied. This is a material error of law.
20. The judge has then gone on to consider the claim under Article 8 outside the Rules. She has made no finding as to whether there is a good arguable case for doing so. This is a material error of law.
21. The judge's findings at paragraphs 76 and 77 of the determination relating to public interest have not been dealt with in the necessary way. The Appellant is in the United Kingdom unlawfully. Her only period of lawful residence was as a visitor in 2007.
22. The judge appears to consider the fact that there are British children in the United Kingdom is a reason for the appeal to be automatically allowed.
23. This Appellant mistreated her children. She has supervised access with them for two hours four times a year. She has been found not to meet the suitability requirements for consideration of limited leave to remain in the UK as a parent under E-LTRPT and/or on the grounds of private life under paragraph 276ADE. The Respondent has found that the terms of paragraph 276ADE and Appendix FM cannot be satisfied for reasons given in the refusal letter. The children in this case have been granted Registration of Minors which gives them UK citizenship as there is no chance of them being returned to their mother. They will be in foster care until they are 18 years old. The Appellant is not allowed any unsupervised access to the children and her behaviour has been found not to be conducive to the public good and therefore she fails to meet the suitability threshold.
24. The judge has given none of this any weight.
25. There are material errors of law in the judge's determination.

Notice of Decision

As there are material errors of law in the judge's determination I am setting aside Judge Head-Rapson's determination promulgated on 31st March 2015.

I dismiss the appellant's appeal under the Immigration Rules and on human rights grounds. This is a mother whose children are permanently in care due to her mistreatment of them and who has supervised contact only 4 times a year. She cannot meet the suitability threshold. The children are never going to be returned to their mother.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Murray