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

Appeal Number: IA/05324/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 January 2016**

**Decision & Reasons Promulgated
On 19 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S O S

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the appellant: Mr Walker, Home Office Presenting Officer

For the respondent: Mr Asiimwe of Pillai & Jones, Solicitors

DECISION AND REASONS

1. The appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal, when the Secretary of State was the respondent.
2. The appellant is a citizen of Benin who applied to vary her leave to remain. Her application was refused and a decision was made to remove her by way of directions under s47 of the Immigration, Asylum and Nationality Act

2006. The appellant appealed that decision and her appeal was allowed on human rights grounds by First-tier Tribunal Judge Moran (“the FTTJ”) in a decision promulgated on 6 July 2015.

3. Given my references to the appellant’s personal circumstances and those of her children an anonymity direction is appropriate.
4. The respondent sought permission to appeal. This was granted by First-tier Tribunal Judge Kelly on 15 October 2015 who distilled the grounds “to complaints that the Tribunal
 - (a) failed to identify any ‘compelling circumstances’ that merited consideration of the appellant’s appeal outside the parameters of paragraph 276ADE of the Immigration Rules [**SS (Congo) [2015] EWCA Civ 387**]
 - (b) failed to assess the best interests of the appellant’s children by asking whether it was reasonable to expect them to follow the appellant to her country of origin, given that the appellant did not have a right to remain in the United Kingdom [**EV (Philippines) and others [2014] EWCA Civ 874**]
 - (c) failed to have regard to the public interest in ensuring that the appellant was financially independent [section 117B(3)]
 - (d) failed to have regard to the requirement to attach little weight to appellant’s private life in the United Kingdom, given that it had been established at a time when she had only limited leave to remain [section 117B(5) and **AM (S 117 B) Malawi [2015] UKUYT 0260 (IAC)**].”

FTTJ Kelly found that these grounds were arguable and, if made out, were capable of affecting the outcome of the appeal.

5. Thus the appeal came before me.
6. For the respondent, Mr Walker relied on the grounds of appeal. Mr Asiimwe, for the appellant, conceded that the decision contained material errors of law. Both Mr Walker and Mr Asiimwe submitted that it was appropriate for me to make a finding to that effect and to proceed to remake the decision. Both representatives made oral submissions on the substantive issue, namely the appellant’s appeal on human rights grounds. However, in the course of making those oral submissions a new issue came to light, one which had not been identified before the First-tier Tribunal: the respondent’s two removal decisions in respect of the appellant and her eldest child were for removal to different countries. In the case of the appellant her removal was to be to Benin, her country of nationality, whereas in the case of the appellant’s eldest child, a Nigerian citizen, her removal was to be to Nigeria. Thus the appellant and her eldest child would not be removed together. Mr Walker immediately conceded that this was not appropriate and that the matter should be reconsidered by the respondent. Mr Asiimwe agreed with this proposal.

7. My task is to decide whether the decision of the FTTJ contains one or more material errors of law. I am satisfied that, for the reasons set out in the grounds of appeal and accepted by both parties, the decision of the FTTJ contains material errors of law. Furthermore, the FTTJ omitted to take into account the respondent's failure to take into account her own guidance on the issue of family removal (Enforcement Instructions and Guidance, Chapter 45, Families and children, Section (b), Family returns process, operational guidance, version 4). Whilst the appeal lies against the immigration decision, not the proposed country of removal, the proposed destinations of the appellant and her eldest dependent child are relevant factors in considering the impact of removal on their family life. This is particularly the case with regard to consideration of the interests and welfare of the two children, including the separation of the eldest child from his mother and the lack of evidence of reception facilities in Nigeria for that child.
8. For these reasons, I find that the decision of the FTTJ contains material errors of law. I therefore remake it and find that the respondent's decision to remove the appellant is not in accordance with the law, there being no indication the respondent has taken into account her own guidance on family removals or any explanation for her departure from that guidance which provides that the respondent's family returns process applies to all families with a dependent child or children (aged under 18) where an adult family member is liable to be removed as a person refused leave to remain. Children in such circumstances "will either be removed as a dependant of that adult, or may be reasonably expected to accompany them". The respondent has clearly departed from her own guidance in making the decision to remove the appellant to Benin, in circumstances where her eldest child is to be removed to Nigeria. I take into account the oral submissions for the parties that the matter should be reconsidered by the respondent. I find that the respondent's decision is not in accordance with the law and that it remains outstanding for a lawful decision to be made.

Decision

9. The making of the decision of the First-tier Tribunal did involve the making of material errors on points of law.
10. I set aside the decision.
11. I remake the decision in the appeal by allowing it to the limited extent that the respondent's decision is not in accordance with the law and remains outstanding for the respondent to make a lawful decision on the appellant's application.

Signed **A M Black**

Date: 18 January 2016

Deputy Upper Tribunal Judge A M Black

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed ***A M Black***

Date: 18 January 2016

Deputy Upper Tribunal Judge A M Black