Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/13884/2015
IA/13891/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 July 2016	**On 28th July 2016**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

I S
(AND ONE CHILD DEPENDENT)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr E. Ayanru of Jesuis Solicitors
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves consideration of the welfare of a child. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.

DECISION AND REASONS

1. The appellant appealed against the respondent's decision to refuse a human rights claim. First-tier Tribunal Judge Howard ("the judge") dismissed the appeal in a decision promulgated on 10 December 2015.

2. The appellant appealed against the First-tier Tribunal decision on the ground that the judge had failed to conduct a sufficiently rigorous assessment of the appellant's rights under Article 8 of the European Convention.

Decision and reasons

3. After having considered the grounds of appeal and oral arguments I satisfied that the First-tier Tribunal decision involved the making of an error on a point of law.

4. I find that there is some force in the argument that the judge failed to conduct a sufficiently rigorous assessment of the best interests of the child according to the principles outlined in *ZH (Tanzania) v SSHD* [2011] UKSC4, *Zoumbas v SSHD* [2013] UKSC 74 and *EV (Philippines) and others v SSHD* [2014] EWCA Civ 874. No separate assessment of the best interests of the child was carried out in accordance with the guidance given in *ZH (Tanzania)*. While the judge mentioned the child's best interests it was in a fairly cursory way as part of his final proportionality assessment. The only factor that he appeared to consider was the fact that it was in the best interests of the child to remain with her mother. None of the wider range of factors identified in *EV (Philippines)* appear to have been considered save for a brief mention of the availability of education in Nigeria. Although, at the date of the hearing, the child had not been continuously resident in the UK for a period of seven years, it was still incumbent on the judge to carry out an evaluative assessment of her ties to the UK in order to assess whether it was proportionate for her to return to Nigeria with her mother. The mere fact that the period of seven years identified in the immigration rules is not met does not obviate the need to carry out a full assessment outside the rules.

5. At the hearing Mr Tufan was fair in accepting that the decision contained errors. Although the issues were not argued fully in the grounds of appeal I am satisfied that the judge's findings in paragraphs 17 and 25 indicate that he may have taken the wrong approach to the assessment of Article 8 outside the immigration rules. The judge appeared to consider that a threshold of "compelling circumstances" was necessary before considering Article 8 outside the immigration rules. The effect of the decision in *SSHD v SS (Congo) and Others* [2015] Imm AR 1036 does not create some form of admissibility threshold. The Court of Appeal pointed out that there may some cases where the rules do not address relevant Article 8 issues. In such cases there would need to be "compelling circumstances" to justify a

grant of leave to remain outside the immigration rules. The judge's finding at paragraph 25 casts some doubt on whether he applied the correct test.

6. Mr Tufan also pointed out that the judge failed to give any consideration to the statutory public interest requirements contained in section 117B of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002"). It is also possible that the judge failed to give adequate reasons for finding that it would be reasonable to expect the first appellant to return to Nigeria to make an application for entry clearance without considering the disruption it would cause to the child.

7. The first point alone would be sufficient, but the combination of errors means that the decision must be set aside. I am told that the appellant's circumstances with her partner have changed. Since the decision her daughter has resided in the UK for a continuous period of seven years. As such it is appropriate to remit the appeal to the First-tier Tribunal for the changed circumstances to be considered in full at a fresh hearing.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

I set aside the decision and remit the appeal to the First-tier Tribunal for a fresh hearing

Signed  Date 27 July 2016

Upper Tribunal Judge Canavan