



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

Appeal Number: IA/24652/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 15 November 2017**

**Decision & Reasons
Promulgated
18 December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**AILERO [O]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Balroop of Counsel, instructed by Greenland Lawyers
LLP (London)

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This appeal comes back before the Tribunal listed for a Case Management Review hearing, further to the 'error of law' hearing before me on 11 October 2017. At the previous hearing I found that First-tier Tribunal Judge Walters' decision promulgated on 12 October 2016 was vitiated for error of law. Given the developments in the case since the occasion of the hearing before First-tier Tribunal Judge Walters, it was considered prudent that rather than simply relisting the hearing for a reconsideration of all

issues that in the first matter the case should be listed for a Case Management Review.

2. The developments in the case were essentially two-fold. Firstly it was said that the Appellant had reconciled with her partner, the position having been that they had separated at the date of the proceedings before the First-tier Tribunal. Secondly, and perhaps more significantly, the Appellant's eldest child, 'S', had acquired British citizenship pursuant to the application for registration that had been referred to in the course of proceedings before the First-tier Tribunal. The appeal was adjourned in the hope that the Respondent might review the position of the Appellant in light of the registration of S as a British citizen.
3. So far as the Appellant's partner, [FA], was concerned, it was discussed at the previous hearing that it might be necessary for him to provide further evidence as to the reconciliation with the Appellant and that there was a continuing parental relationship with the children. It was also indicated at the previous hearing that it was entirely possible that a favourable decision might be made in respect of the Appellant without such a decision being made in respect of Mr Akpomuvwe.
4. Since the last hearing the Appellant's representatives have forwarded to the Respondent items of evidence in support of the assertion of reconciliation and a continuing parental role in respect of the children. The evidence is by way of a supporting letter from the Appellant, a letter from the family's church, a letter from the children's school, and a number of photographs showing the father with the children.
5. Ms Willocks-Briscoe informs me that in the time available the Respondent has not had an opportunity to review these materials and to reach any decision in respect of the children's father. Nor in the circumstances has the Secretary of State reached any decision in respect of the Appellant.
However Ms Willocks-Briscoe, in light of the policy of the Home Office which is extensively referred to in the 'error of law' decision, acknowledges that in the ordinary course of events leave to remain would be granted to the primary carer of a British citizen child. It is in all such circumstances that today Ms Willocks-Briscoe indicates that she offers no resistance to the Appellant's appeal.
6. In consequence I conclude that the decision in the appeal should be remade in favour of the Appellant and accordingly I allow her appeal on human rights grounds.
7. As discussed previously, the remaining dependants (i.e. the partner of the Appellant and the younger child 'E') are not strictly speaking appellants within these proceedings. Ms Willocks-Briscoe has indicated that in the circumstances of the mother being granted leave to remain it will follow that E will be granted leave to remain 'in-line'. Accordingly, this is the expectation of the Tribunal further to the favourable outcome for Ms [O].

(S, of course, does not require leave because of his status as a British citizen.)

8. So far as [FA]'s position is concerned - it remains outstanding for consideration before the Secretary of State. As discussed, he does not have an appeal in his own right before the Tribunal and accordingly it is not for the Tribunal to reach any decision in respect of his individual circumstances and case; it seems to me, therefore, it would be inappropriate to list the appeal for a substantive 'remaking' hearing in effect merely to determine issues in respect of [FA] that are not directly within the jurisdiction of the Tribunal. Accordingly the appeal is now brought to a conclusion on the basis that the mother's appeal is allowed.

Notice of Decision

9. The appeal is allowed.
10. No anonymity direction is sought or made.

Signed:

Date: 15 December 2017

Deputy Upper Tribunal Judge I A Lewis

TO THE RESPONDENT **FEE AWARD**

I have allowed the appeal. However as the premise for allowing the appeal is based on a new circumstance that did not pertain at the date of the Respondent's decision, I decline to make a fee award.

Signed:

Date: 15 December 2017

Deputy Upper Tribunal Judge I A Lewis