Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00064/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1 October 2018	**On 19 October 2018**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MRS I. I.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G Lee, Counsel, instructed by Iris Law Firm (Gateshead)
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1.Folloowing a hearing in North Shields on 19 March 2018 I set aside the decision of Judge Head-Rapson of the First-tier Tribunal (FtT) sent on 19 December 2016 dismissing the appellant's appeal against the decision made by the respondent on 17 February 2015 to refuse her human rights claim and to refuse to revoke a deportation order made against her. I stated at paras 14-17 that:

"14. Nonetheless I see no valid reason for not accepting the judge's adverse credibility findings set out at paragraph 127:

"127. Throughout the hearing the Appellant was inconsistent in her evidence:

(i) The Appellant provided the names of her parents in the Screening Interview yet when asked to name them in cross examination, she claimed she did not know their names.

(ii) She denied that her family or parents assisted her in any way and denied that she had any contact with her parents since she was four years old, yet it would appear, from the information provided on page B5 of the Respondent's bundle, that she knew that they were still alive in 2008.

(iii) In the Screening Interview the Appellant stated that her brother was 2 years her junior and was 14 years old. However, the Appellant was around 32-33 years old at that time, and that simply could not have been the case.

(iv) The Appellant made no mention of her 4 sisters during the Screening Interview and yet in her oral evidence she was able to name them. She explained the reason for that was because she had not grown up with them or seen them in years. Mr Whatcott asserted that the Appellant does not deserve the benefit of the doubt as she clearly has close family in Nigeria.

(v) She stated that her aunt who raised her has no spoken to her since she married her ex-husband in Nigeria. The Appellant has been estranged from him for many years and I simply do not accept that the Appellant or her aunt would not have tried to establish some contact. It simply does not stack up in my view.

(vi) She stated that M often stayed overnight with her at her home but Mabel completely denied this in her oral evidence. She stated that Ml often stayed overnight with her at her home but Mabel completely denied this in her oral evidence.

(vii) The Appellant stated that she had left university before the completion of her course, in order to study nursing, but that is at odds with the suggestion on the Screening Interview that she obtained a diploma in journalism.

(vii) She informed the Tribunal that Mrs C often looked after the children when she felt overwhelmed. Mrs C was clear in her evidence that her own health issue precluded her from offering this support to the Appellant.

(viii) The Appellant explained that she moved into a house and yet when Reverend C was asked, he stated that the Appellant lived in an upper Tyneside flat. Mrs C and M confirmed that she lived in an upper flat, not a house as the Appellant claimed.

(ix) Dr Cheetham's comments that both of O's parents were said to be well, and that they had two other children. I also note that Reverend and Mrs C were under the distinct impression from

information given by the Appellant that J's father was also the father of O and R, which is not the case. "

15. The points raised in the grounds regarding these findings amount to no more than mere disagreements with these findings. These findings were ones that the judge was entitled to make in light of identified discrepancies in her evidence.

16. Given that the Upper Tribunal has already remitted the case once to the FtT, it would be inappropriate to remit it again. It must be retained in the Upper Tribunal with the specified findings of fact preserved.

17. I consider that the case should next be set down for a CMR (before me if practicable) to be held at Field House not before end of April and timed for one hour. I adopt this course because it is important that the Upper Tribunal has the benefit of the respondent's up-to-date views on this appeal, particularly in light of:

    1) The fact that the oldest child has now obtained British citizenship (since 4 September 2017).

    2) The fact that it is now three years since the respondent's refusal to revoke the deportation order decision and the time since commission of the appellant's offence is now over eleven years.

The period of 1 hour should suffice for any submissions relating to 1) and 2)."

2. There was a CMR held on 6 August 2018 which had to be adjourned until today to afford the parties more time to finalise their position in light of the respondent stating that deportation of the appellant was no longer being pursued.

3. At the hearing before me on 1 October 2018 Mr Bramble informed me that the respondent had reviewed matters and he produced a letter addressed to the appellant dated 26 September 2018 in which it is stated that the Secretary of State "will not be taking steps to deport you at the present time. This is because there is currently a legal barrier that prevents you from being deported. The Secretary of State considers that your removal would be disproportionate under the requirements of the European Economic Area (EEA) Regulations because your British child would be required to leave the territory of the EEA."

4. Mr Lee said that he was reluctant to withdraw the appellant's appeal in view of the fact that the respondent's letter of 26 September 2018 did not in terms withdraw the decision under appeal, namely a refusal to revoke a deportation order.

5. In light of the respondent's letter, even though it does not in terms state that the decision to revoke the deportation order is withdrawn, I am satisfied that the respondent has made clear that it is no longer her intention to deport the appellant since to do so would contravene her rights as the parent of a British citizen child who would otherwise be required to leave the EEA. In such circumstances, there is no longer any public interest in deportation to be weighed against the appellant's Article 8 rights and she is entitled to succeed in her human rights appeal on that basis.

6. The appellant should note however that the respondent still maintains that her presence is not conducive to the public good and that her case will be reviewed if: she comes to adverse notice, for example by committing further offences; the EU law barrier that prevents her from being deported is removed; or there is a change in her family or personal circumstances.

7. To summarise:

The decision of the FtT judge is set aside for material legal error;
The decision I re-make is to allow the appellant's appeal on human rights grounds.

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: Date: 8 October 2018

Dr H H Storey
Judge of the Upper Tribunal