



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

Appeal Numbers: HU/08946/2016  
HU/08948/2016  
HU/08950/2016

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 4 April 2018**

**Decision & Reasons  
Promulgated  
On 20 April 2018**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**SESAN [O] (FIRST APPELLANT)  
[K O] (SECOND APPELLANT)  
SHUBUSOLA [O] (THIRD APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer

For the Respondents: First appellant (in person)

**DECISION AND REASONS**

1. I shall refer to the respondents as the appellants in this appeal before the Upper Tribunal as they appeared before the First-tier Tribunal. The Secretary of State shall be referred to as the respondent. The appellants were born respectively in 1978, 2008 and 1977. The first and third appellants are married to each other and the second appellant is their

child. They appeal to the First-tier Tribunal (Judge Hindson) against a decision dated 16 March 2016 to refuse their application on human rights grounds. The First-tier Tribunal, in a decision promulgated on 7 August 2017, allowed the appeals on Article 8 grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The first appellant appeared in person before the Upper Tribunal. Mrs Pettersen, a Senior Home Office Presenting Officer, appeared for the respondent. I am grateful to the first appellant for his attendance and I listened carefully throughout to what he told me about his appeal.
3. I find that Judge Hindson erred in law such that the decision falls to be set aside. First, the judge failed to have any regard to the fact that there is in existence a residence order in the Family Court in respect of the second appellant and in favour of the first appellant's mother (a British citizen). She also has a residence order in respect of the other child of the first and third appellants who was born in July 2011 but (as Judge Hindson recorded) had "not been included as an appellant in this case because of financial constraints." Both first and third appellants and their children are citizens of Nigeria. Both children have lived in the United Kingdom throughout their lives.
4. The residence orders referred to are discussed in the refusal letter at page 13 of 16:

"It is also noted that your mother who is a British citizen has a residence order for your two children and claims she provides financial support for the family. The residence order states the children will live with their parental grandmother however, from the information you and your mother have provided, you and your children are living in one of her properties at [43 -, Bradford] and your mother lives at her other property [20 -, Bradford]. You have therefore not been compliant with the instructions of the residence order. Your representatives also claimed your mother has not consented to the children travelling to Nigeria due to their wellbeing however you have stated that K, your eldest child, travelled with you to Nigeria in 2010."
5. Although I accept that the second appellant was very young, she has travelled to Nigeria, as the first appellant confirmed at the Upper Tribunal hearing. What the judge says at [23] is therefore incorrect. Further, the judge has ignored the existence of the residence orders. At the very least, the existence of the orders (which would have been apparent to the judge from any reading of the refusal letter) should have led to an enquiry as to the role which the first appellant's mother plays in the lives of the children. I accept that there may be nothing in the point raised in the refusal letter, that is, that the children are living with their natural parents rather than the grandmother. However, I am not satisfied that the judge has completed a full and thorough analysis of the facts in this case. In the circumstances, his decision is set aside. Given that there is further fact-finding to be made, I find that the appeal should be returned to the First-tier Tribunal for a judge to make a decision in that forum.

**Notice of Decision**

6. The decision of the First-tier Tribunal promulgated 7 August 2017 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Hindson) for that Tribunal to remake the decision.
7. No anonymity direction is made.

Signed

Date 18 APRIL 2018

Upper Tribunal Judge Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 18 APRIL 2018

Upper Tribunal Judge Lane