



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/09336/2017

THE IMMIGRATION ACTS

Heard at Field House
On November 9, 2018

Decision & Reasons Promulgated
On November 19, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MISS OLUWAKEMI PRICILLA ALIDI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Adewoye, Solicitor
For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nigeria. The appellant entered the United Kingdom without a valid visa on August 12, 2003. She gave birth to her son on August 27, 2007 and on March 17, 2016 she submitted an application for leave to remain on family/private life grounds. The respondent refused this application on August 4, 2016.
2. On August 10, 2016 she submitted a further application for leave to remain but this application was rejected by the respondent on August 17, 2017 on the basis neither she nor her son were British citizens and consequently she could not satisfy the requirements of Appendix FM of the Immigration Rules because it was not unreasonable for her and her son to leave the United Kingdom and consequently paragraph EX.1(a) of Appendix FM of the Immigration Rules does not apply. There

were also no “very significant obstacles” to their integration into Nigeria and there were no compelling circumstances meriting a grant of leave outside the Immigration Rules.

3. The appellant appealed that decision under section 82 of the Nationality, Immigration and Asylum Act 2002. The grounds argued the respondent should have granted the application on the basis that the appellant’s child met the requirements of paragraph 276 ADE(1)(iv) as he had lived in the United Kingdom for seven years and it would be unreasonable for him to be removed. The child was now over 10 years of age and qualified for naturalisation as a British citizen and it was wholly disproportionate to require him to leave.
4. The appeal came before Judge of the First-tier Tribunal Paul on May 21, 2018 and in a decision promulgated on June 20, 2018 the Judge concluded:
 - (a) The appellant’s evidence lacked credibility especially with regard to the fact that she had lived here since 2003 surviving on nothing more than handouts from friends and church.
 - (b) The Judge rejected her claim that she would be ostracised by her family in Nigeria because she had stated her parents had died and her sister lived in the USA.
 - (c) The child’s best interest were the starting point and the Judge noted that he appeared to be enjoying school and thriving but there was nothing about his current circumstances which would put him at a disadvantage if he was to return to Nigeria.
 - (d) In considering section 117B(6) of the 2002 Act the Judge had regard to wider considerations including the appellant’s circumstances. The appellant had been in this country unlawfully and section 117B(iv) applied.
5. The appellant submitted grounds of appeal against this decision on June 29, 2018 arguing the Judge had erred by failing to have regard to the fact that the child was now a British citizen who had been here for over 10 years and the approach to section 117B(6) of the 2002 Act was flawed.
6. Permission to appeal was granted by Judge of the First-tier Tribunal Shimmin on September 25, 2018 who found it arguable the Judge had erred by failing to take into account the child’s British nationality and his residence in the United Kingdom for over seven years.

PRELIMINARY ISSUES

7. Mr Jarvis accepted that there was a material error in law because the Judge failed to have regard to the fact the child was a British citizen at the date of hearing. However, in assessing reasonableness he submitted the Judge had failed to make a definitive finding on the whereabouts of the child’s father and this would have a bearing on whether the child would have to leave the United Kingdom.

8. Mr Adewoye submitted that whilst the Judge had not made a clear finding the evidence clearly pointed to the fact that the child's father played no role in the child's life and applying the principles in Ruiz Zambrano C-24/09 the appellant's appeal must succeed as requiring the appellant to leave the United Kingdom would also lead to the child, a British citizen, also being forced to leave the country.
9. I indicated to the representatives that I agreed there was an error in law as the Judge had failed to address the fact the appellant's child was a British citizen who had been living here for over ten years. As far as the child's father was concerned, I indicated to Mr Jarvis the decision was as clear as it could be. The evidence presented indicated there had been no contact with the child's father at all and there was nothing on the Tribunal or respondent files that suggested anything that would enable a Judge to conclude differently. Whilst the Judge had concerns about the reliability of the appellant's own evidence that did not alter the fact (a) the child was British; (b) he had been here for over ten years and (c) there was no evidence his father had any contact with him.
10. Mr Jarvis accepted that if that was the Tribunal's view then the appeal should be allowed under the *Zambrano* principle because to require the appellant to leave would force a British citizen to leave the United Kingdom and that would be a breach of the child's rights.
11. I therefore find there was an error in law.

Notice of Decision

12. There is an error of law. I set aside the original decision and remake it, allowing it under article 8 ECHR.

Signed

Date 09/11/2018



Deputy Upper Tribunal Judge Alis

**FEE AWARD
TO THE RESPONDENT**

I do not make a fee award as I have allowed the appeal based on the child's current circumstances.

Signed

Date 09/11/2018



Deputy Upper Tribunal Judge Alis