



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15399/2016

THE IMMIGRATION ACTS

Heard at Field House
On 3 July 2018

Decision & Reasons Promulgated
On 8 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MISS A A A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Adewole, Solicitor of A & A Solicitors LLP

For the Respondent: Mr C Howells, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Nigeria, date of birth 18 May 1983, applied for leave to remain based on human rights grounds on 4 March 2016. By a decision dated 6 June 2016 the Secretary of State refused leave to remain both under the Rules and with reference to Article 8 ECHR.

2. As a fact the Appellant in both her application, which was homemade, and in representations made by herself and her mother, Mrs [A], the Appellant's application and reference was simply to herself and her two twin children, NOO and ETO, date of birth 7 July 2013, born in Nigeria and brought to the United Kingdom on 20 October 2014. The Respondent's decision therefore addressed the Appellant and her two twins but made no reference to a child of her sister, [JF], (date of birth 31 July 2006), a British national whom the Appellant was caring for. The Judge heard evidence of the role that the Appellant had taken over in terms of parental responsibility which she had originally shared with her own mother, Mrs [A]. Through the infirmity of Mrs [A], the role of being in effect the sole parent had fallen on the Appellant.
3. I should say that the evidence presented in writing concerning the relationship between [JF] and the Appellant let alone the Appellant's children was very brief and inadequate. The evidence must have been supplemented to a degree although there is nothing in the decision which particularly fills out the information about the relationship or the extent of her role nor is there apparently any discussion of the impact of separation from him if the Appellant was to remove to Nigeria nor was there any consideration by the Judge of [JF] settling in Nigeria or it being reasonable for him to leave the United Kingdom. This outcome may have been the product of the way the case was presented. For my part, I make no criticism of that save to say that the lacuna in the evidence demonstrated the difficulty there would be in remaking this decision.
4. It is agreed between Mr Adewole and Mr Howells, and I agree with them, that the Judge's consideration of at least [JF] simply failed to address the implications of Section 117B(6) of the NIAA, 2002. The Judge made reference to Section 117B(5), at least one other Section and identifies that he is bound by them. Quite simply, the Judge did not address sub-section (6), and erred in law in failing to address the reasonableness of [JF] removing from the UK or being separated from someone who is in a parental relationship, which is unfortunate. In the circumstances I agree that the Original Tribunal's decision cannot stand and, having invited representations

about it, I have concluded that sadly this is a case which will have to be remade in its entirety and that further up to date evidence will have to be produced to address both Section 117B(6) and the wider issue of proportionality under Article 8 ECHR.

5. The Original Tribunal's decision does not stand.

NOTICE OF DECISION

6. The appeal is allowed to the extent that it is returned to the First-tier Tribunal to be remade.

DIRECTIONS

- (1) List for hearing not before First-tier Tribunal Judges Walters or Pooler.
- (2) Time estimate - 2 hours.
- (3) No interpreter required.
- (4) Any other witnesses to be notified as to their immigration status and/or nationality to the Home Office not less than 10 working days before the further hearing.
- (5) Additional bundles to be prepared updating the evidence and relating to the human rights claims vis-à-vis the children, including [JF] and served not later than 10 working days before the further hearing. Such time limits to stand unless altered at a CMRH or PTR in the First-tier Tribunal.

**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 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.

Signed

Date 24 July 2018

Deputy Upper Tribunal Judge Davey