



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

Appeal Number: IA/01895/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 21 February 2018**

**Decision & Reasons
Promulgated
On 28 March 2018**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**UCHE [N]
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Smith, Counsel, instructed by IR Immigration Law
For the Respondent: Mr S Kotas, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing her appeal against the respondent's refusal to grant her leave to remain in the United Kingdom on human rights grounds, based on her family and private life with her husband, and their children, a daughter aged 9 and a son age 5, who are dependants in this appeal. All members of this family are Nigerian citizens, and none is a British citizen.
2. The appellant represented herself before the First-tier Tribunal and produced a quantity of material about the children's schooling and private

life including a letter from the daughter which was taken into account (see [19]). The First-tier Tribunal Judge noted that the younger child was of an age where he would be primarily focused on home life with his parents. The judge had regard to the appellant's conduct, when assessing whether it was reasonable to expect the children to leave the United Kingdom and return to Nigeria with their parents (see [20] and [23] in the decision)

3. The Judge's decision did not mention the guidance given by the Court of Appeal in *MA (Pakistan) & Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor* [2016] EWCA Civ 705, nor does it appear that he had the test as there enunciated in mind when reaching his conclusions in relation to the children. *MA (Pakistan)* requires the judge to assess the best interests of the children without reference to the parents' immigration history. On the basis of the limited reasoning in this decision I am not satisfied that *MA (Pakistan)* has been correctly applied.
4. Accordingly, I allow the appeal and remit it to the First-tier Tribunal for hearing afresh with no findings of fact or credibility reserved.
5. I make the following direction for the future conduct of this appeal:
 - (a) Not later than 14 days from the sending out of this order, the appellant shall serve and file an updated and consolidated bundle of evidence for the hearing in the First-tier Tribunal, to include witness statements for any witnesses on whose evidence she seeks to rely at the First-tier Tribunal hearing.

The First-tier Tribunal may make further directions before the rehearing of the appeal.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Signed: **Judith A J C Gleeson**
Upper Tribunal Judge Gleeson

Date: 26 March 2018