



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

Appeal Number: EA/00611/2019

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 4 November 2019**

**Decision & Reasons
Promulgated
On 28 November 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR P N A
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Presenting Officer

For the Respondent: Mr K Thathall, counsel instructed through Thathall
Immigration

Law Chamber

DECISION AND REASONS

1. In this decision the Appellant will be referred to as “the Secretary of State” and the Respondent will be referred to as “the Claimant”.

2. The Claimant, a national of Nigeria, date of birth 3 March 1970, appealed against the Secretary of State's decision dated 16 November 2018 to make removal directions under the Immigration (European Economic Area) Regulations 2016 with particular reference to Regulations 23(6)(a)/23(6)(c) pursuant to Regulations 26(3) and 32(2) of the 2016 Regulations. The basis of the justification for removal was contained within the decision and particularly relates to the end of the relationship with a claimed EEA national, Gunita, by whom the Appellant has a child.
3. The appeal against the adverse decision was heard before First-tier Tribunal Judge Lodge who on 24 April 2019 in a Decision and Reasons promulgated on 1 May 2019, allowed the appeal under the EEA Regulations and refused it on human rights based grounds. The Secretary of State sought permission to appeal which was refused by First-tier Tribunal Judge Keith (as he then was) on 21 May 2019. Permission to appeal was given by Deputy Upper Tribunal Judge Roberts on 24 June 2019.
4. Mr Mills correctly argues that the First-tier Tribunal Judge had incorrectly addressed the wrong decision, which had carried no right of appeal, and somehow or other the matter had become confused with the issue of the nationality of the EEA national upon whom the Claimant's claim was reliant. Mr Thathall argues that material matters which should have been addressed which bore on the issue of human rights and possibly the Regulations were not addressed by the Judge. Both sides are therefore in one way or another in agreement that there were fundamental flaws in the First-tier Tribunal Judge's decision which cannot be remedied here and need further findings of fact and the issues properly addressed with reasons in the First-tier Tribunal.
5. In the light of the Presidential Guidance it seems to me that the best and correct course is for this matter to be remade in the First-tier Tribunal. No findings of fact to stand. No findings on relevant issues, if any, to stand and the matter to be approached de novo.

NOTICE OF DECISION

6. The Original Tribunal's decision does not stand and the matter will have to be remade in the First-tier Tribunal.

DIRECTIONS

- (1) Relist at First-tier Tribunal at Birmingham, not before First-tier Tribunal Judge D Lodge.
- (2) Time estimate - one hour.
- (3) No interpreter required.
- (4) Any further documents relied upon in support of either an Article 8 claim or in respect of other issues to be served by the parties upon each other and to the Tribunal not less than ten clear working days before the resumed hearing.
- (5) Anonymity direction made.

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 his 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 11 November 2019

Deputy Upper Tribunal Judge Davey