



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

Appeal Number: HU/04623/2018

THE IMMIGRATION ACTS

**Heard at Field House
On: 1 April 2019**

**Decision and reasons
Promulgated
On: 17 April 2019**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**OLISA [O]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms B Morjaria of Counsel

For the respondent: Mr I Jarvis, Senior Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Nigeria, appealed against the decision of the respondent refusing the appellant's application to remain in the United Kingdom based on his family life with his children in this country.
2. Permission to appeal was granted First-tier Tribunal Judge Osborne in a decision dated 1 January 2019 as he was of the view that it is arguable that the Judge should have considered the appellant's appeal pursuant to Article

8 of the European Convention on Human Rights because it was raised and pursued by the appellant.

3. At the hearing I was informed that family court proceedings have been initiated by the appellant and he has been granted some contact with his children through social services.
4. This appeal has a long litigation history. The appellant entered the United Kingdom as a student and his further applications for leave to remain were refused. His appeal against the respondent's decision to remove him from the United Kingdom was dismissed by First-tier Tribunal Judge Symes on 10 December 2014. The appellant had claimed that his children will face forcible FGM on their return to Nigeria. He appealed to the Upper Tribunal and a Deputy Upper Tribunal Judge Mailer rejected the appeal.
5. It was noted that the appellant at that time had provided no credible evidence that he was in a genuine parental relationship with his children. On the contrary, it was stated that the abundant evidence provided demonstrates that the breakdown of the appellant's marriage and that his children became the area of allegation and counter allegations between the appellant and his wife.
6. It was clear at the time that the appellant's access to his children was sporadic at best and was cut off because his wife perceived him as seeking to poison the children against him. Therefore, the position was reviewed by August 2016 and a decision made that the appellant was not to have contact with his children due to the ongoing acrimony between the parents. The appellant was advised to seek contact with his children through the courts and on 24 July 2018 he commenced family proceedings at the Barnett Family Court to establish some contact with his children.
7. The appeal should be reheard to determine whether the appellant has family life with his children which will be breached and also whether his children's rights under Article 8 of the European Convention on Human Rights will be breached by requiring their father to leave the United Kingdom and return to Nigeria. Findings of fact must be made about the best interests of the children after the family proceedings are concluded.
8. In the circumstances, I direct that the appeal be placed before any First-tier Tribunal Judge apart from First-tier Tribunal Judge Davey for hearing of the appeal de novo.

Dated this 14th day of April 2019

Signed by

A Deputy Judge of the Upper Tribunal

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Ms S Chana