



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/09187/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27<sup>th</sup> February 2019

Decision & Reasons Promulgated  
On 11<sup>th</sup> March 2019

Before

Upper Tribunal Judge Chalkley

Between

E. U. E.  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant:

Mr N Garrod of Counsel instructed by Gordon & Thompson

For the Respondent:

Ms N Willocks-Briscoe, Home Office Presenting Officer

**REASONS FOR FINDING AN ERROR OF LAW**

**Anonymity**

*I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellants. No report of these proceedings shall directly or indirectly identify them. This direction applies to both the appellants and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings.*

*I make this order because the appellant's child is a minor.*

1. The appellant is a citizen of Nigeria who was born on 25<sup>th</sup> December 1971 and who claims to have arrived in the United Kingdom some time during 2000. She adopted a child she claims was that of her late sister who has subsequently died. Notwithstanding the fact that the appellant claimed to have arrived in 2000, the respondent had evidence that the appellant was in Nigeria in 2005 when she applied for entry clearance to the United Kingdom, which was refused. She maintains that her child has been in the United Kingdom for more than seven years and, as a result, it is not reasonable to expect her to leave the United Kingdom.
2. The appellant applied for leave to remain in the United Kingdom on the basis of her Article 8 ECHR rights but the respondent rejected her claim and she appealed to the First Tier Tribunal.
3. The grounds of challenge to the Upper Tribunal asserted that the First Tier Tribunal Judge failed to properly consider the evidence placed before him and whilst I am satisfied that there is no merit in that challenge, what has been established during the hearing before me is that nowhere in the determination does the judge give any self-direction on the standard of proof or indicate what standard of proof she has applied.
4. It was claimed for example that in finding that the appellant had not been in the United Kingdom since 2000, the judge failed to consider page 165 of the appellant's bundle being the appellant's daughter's health record, but that does not help in establishing when the child entered the United Kingdom. The appellant has not been able to satisfactorily explain what happened to the child's passport, but she has produced evidence from a school confirming that the child has been attending school since 11<sup>th</sup> September, 2012 and claims that the child was registered with a doctor in March, 2010 and with a dentist in 2011. The appellant did not provide copies of doctor's records or of the dentist's records and the judge was obviously concerned with the credibility of the appellant, because she claimed to have arrived in 2000 when the Home Office had evidence to suggest she was in Nigeria in 2005.
5. However, it is clear to me that the determination cannot stand for the reasons I have identified above. I set it aside since it contains no self-direction on the burden and standard of proof and nowhere indicates what standard of proof the judge has applied. The matter will be remitted to the First-tier Tribunal for hearing afresh before a judge other than Judge Quinn.

**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 them or any member of their 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.

*Richard Chalkley*

Upper Tribunal Judge Chalkley

Dated 07 March 2019