



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/14559/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice

**Determination &
Promulgated**

Reasons

On 17 December 2018

On 07 January 2019

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**KBA
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Kogulathas, of Counsel, instructed by Halliday
Reeves

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1.** The appellant challenges the decision of First-tier Tribunal Judge Hodgkinson promulgated on 23 October 2018 dismissing his deportation appeal on asylum and human rights grounds.
- 2.** The appellant is a national of Nigeria born on 6 January 1990. He arrived in the UK in 2005, in order to work and using a false passport. There followed a string of criminal convictions which culminated in a deportation order being made against him on 23 December 2014. On 4 July 2018 his human rights claim was refused with an in country

right of appeal. The appeal was heard by the First-tier Tribunal at Harmondsworth on 16 October 2018.

3. Permission to appeal was sought and was granted by First-tier Tribunal Judge Bird on 5 November 2018. It was considered arguable that the judge's assessment of whether it would be unduly harsh for his child to be left here without him was flawed. The matter then came before me.
4. The appellant was not produced for the hearing. Mr Clarke conceded, at the outset, that he was unable to defend the decision as the judge had taken account of irrelevant matters in the "unduly harsh" assessment. He stated that following KO (Nigeria) [2018] UKSC 53, the criminal record of the appellant should not have factored into the assessment of the judge, but it clearly had along with matters such as his immigration history, his rehabilitation and the risk posed to the public. As such, the determination contained errors of law. Ms Kogulathas was in agreement with Mr Clarke and had nothing to add, given the concession.
5. At the conclusion of the hearing, I indicated that I would be remitting the appeal to the First-tier Tribunal for a fresh hearing and for the decision to be re-made.
6. Having considered the judge's determination and the brief submissions properly made by Mr Clarke, I conclude that the decision is unsustainable. It is plain from the determination that the judge took account that factors that, following the KO guidance, should not have formed part of his assessment when deciding whether it was unduly harsh for the appellant's child to remain in the UK without him. No findings are preserved, and the matter is remitted to the First-tier Tribunal for a fresh decision to be made.

Decision

7. The First-tier Tribunal made errors of law and I set aside that decision.

Anonymity

8. I make an order for anonymity.

Signed



Upper Tribunal Judge
Date: 17 December 2018