



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/02483/2015

THE IMMIGRATION ACTS

Heard at Field House
On 21 January and 1 March 2016

Decision & Reasons Promulgated
On 30 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

GO (NIGERIA)
(ANONYMITY DIRECTION MADE)

Respondent/Claimant

Representation:

For the Appellant: Mr N. Bramble (21.01.16) and Mr S. Staunton (01.03.16),
Specialist Appeals Team

For the Respondent/Claimant: Mr A. Bajwa (21.01.16) and Ms K. Joshi (01.03.16), Bajwa &
Co Solicitors

DECISION AND REASONS

1. The Secretary of State appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Aujla) allowing the claimant's appeal against the decision of the Secretary of State to remove her and her dependent children as persons subject to administrative removal under Section 10 of the Immigration and Asylum Act 1999, their asylum/human rights claim having been refused. The First-tier Tribunal made an anonymity direction, and in the light of the case which the claimant has advanced in the Upper Tribunal, I consider that her anonymity should be preserved.

The Reasons for Granting Permission

2. On 12 November 2015 First-tier Tribunal Judge Simpson gave her reasons for granting the Secretary of State permission to appeal. In essence, it was arguable that the judge, who was not assisted by the absence of a HOPO, had not reached an adequately reasoned decision; had made errors of fact (English is one of the national languages of Nigeria); had failed to explain what the insurmountable obstacles were to reintegration; and had wrongly treated EX.1 as freestanding.

The Error of Law Hearing in the Upper Tribunal

3. After hearing from Mr Bramble and Mr Bajwa, who appeared for the claimant below, I found that an error of law was made out such that the decision should be set aside and remade. I gave my reasons for so finding in short form, and said that I would give extended written reasons in due course

Reasons for Finding an Error of Law

4. Mr Bramble agreed with Mr Bajwa that the judge had not erred in law in considering whether the claimant was eligible for leave to remain under the child route in Appendix FM, and in finding that she could potentially take advantage of the exemption criteria contained in EX.1. For she is the sole carer of her two dependent children, and it is not suggested there is another person in the United Kingdom who can look after them in her place.
5. The judge's error lies in him not conducting a thorough and balanced best interest assessment as set out in the authorities, most conveniently by Clarke LJ at paragraphs [35] to [37] of **EV Philippines [2014] EWCA Civ 874**.
6. The judge also did not address wider proportionality considerations before reaching the conclusion that it would be totally unreasonable to expect both the claimant's daughters to leave the United Kingdom, including the daughter who had not yet accrued seven years' residence, but would do so within a month of the hearing (on 5 August 2015). The judge did not acknowledge that the two children would be going back to the country of their nationality as part of a family unit, that English was the national language of Nigeria, and that there was a functioning healthcare and education system in Nigeria.
7. The judge also did not take into account that none of the members of the family were British citizens, and none of them had any status, and so prima facie it was reasonable to expect the children to leave the UK with their sole carer, and the desirability of the children being educated at public expense in the UK could not outweigh the benefit to the children of remaining with their sole parent.
8. The judge rightly considered the question of the difficulties that the family might face on return to Nigeria. However, he did not give adequate reasons for holding that there appeared to be no obvious means by which the appellant could provide for her two children as a single mother on her return to Nigeria, or for holding at paragraph [36] that, as a result of the claimant having lived in the United Kingdom

for sixteen years, there would be very significant obstacles to the claimant reintegrating into life in Nigeria with her children.

9. On the issue of obstacles to reintegration, the judge was confronted with a difficult procedural conundrum. In 2012 the claimant had made a claim for asylum which had been refused, and the claimant had not apparently appealed against the refusal. However, her witness statement for the hearing contained an account of past persecution in Nigeria which, if credible, was clearly relevant to the question of whether there were very significant obstacles to her reintegration into life in Nigeria and/or whether the safety and welfare of the children would be imperilled on return to Nigeria.
10. Having set out a summary of her oral evidence in paragraph [26], the judge concluded by saying that the claimant did not rely on her comments about asylum and Article 3 that she set out in her witness statement. This raised the following question: which passages in her witness statement was she abandoning, and why? The answer to this question was relevant to the assessment of her general credibility.
11. The above problem is compounded by the judge's finding at paragraph [30], where he said that she came across as a witness of truth, "although she may have slightly embellished her account." The judge does not go on to identify the respects in which the claimant may have embellished her account.
12. The upshot is that the judge has not given adequate reasons for allowing the claimant's appeal, and so the decision must be set aside and remade, with none of the findings of fact made by the previous Tribunal being preserved.

The Resumed Hearing to Remake the Decision

13. For the purposes of the resumed hearing, the claimant's solicitors prepared a supplementary bundle containing a second witness statement from the claimant. I noted that the claimant continued to assert that she had in effect a well-founded fear of persecution on return to Nigeria. Ms Joshi insisted that the claimant was not advancing an asylum claim, or a claim under Article 3 ECHR. She only proposed to rely on the claimant's evidence to establish that removal was disproportionate. Having discussed this matter with both representatives, I ruled that I would not seek to fetter the claimant in the evidence which she gave, but that in assessing its probative value I would have to take into account the reasons given by the Secretary of State for rejecting her asylum claim. These reasons are contained in a letter dated 21 December 2012 which Mr Staunton had on file, and which I arranged to have copied.
14. The claimant gave oral evidence, and she was cross-examined by Mr Staunton. She was re-examined by Ms Joshi, and she also answered questions for clarification purposes from me.
15. In his closing submissions on behalf of the Secretary of State, Mr Staunton submitted that the children had been brought up in the same "demographic" as they would be returning to in West Africa. So resettling in Nigeria would not be a culture shock to

them. It was not credible that the claimant had survived in the UK simply through providing intermittent hairdressing services to friends. So she could work as a hairdresser in Nigeria in order to earn enough money to maintain and accommodate herself and the children. She had a significant network of friends here who were part of the Nigerian diaspora, and she could reasonably expect to look to such friends for assistance and support in re-establishing herself on return to Nigeria.

16. On behalf of the claimant, Ms Joshi submitted there were compelling and exceptional circumstances outside the Rules which justified the claimant and her children being accorded Article 8 relief. The eldest child had nearly acquired British citizenship as a result of ten years' residence. Their mother had been here for over sixteen years. The children would find it difficult to adapt to a different school curriculum in Nigeria. The claimant had given credible evidence that her second child was "hairy" like her, and so would be vulnerable, like her, to being accused of being a witch. Due to the claimant's past adverse experiences in Nigeria, both as a child and as a young adult, and because of her genuine fears of persecution in Nigeria on return, there was a high likelihood that the claimant would not have the will to look after her children properly and to protect them from harm.

Discussion and Findings on Remaking

17. It was accepted by Ms Joshi that the claimant could not qualify for leave to remain under the parent route contained in Appendix FM. This was on the understanding that neither child had accrued seven years' residence on the date of application. Child T was born on 23 March 2007. Child V was born on 5 August 2008. Having checked the file, I am satisfied that the application which triggered the decision under appeal was made after Child T had turned seven years of age, by a letter dated 27 March 2014. Accordingly EX.1(a) and Rule 276ADE(1)(iv) are engaged. However, both children are also qualifying children for the purposes of Section 117B(6), and the question whether it is reasonable to expect the children to leave the UK needs only to be answered once. So I will answer this question in due course by reference to Section 117B(6).
18. Ms Joshi did not address me on the possibility of the claimant qualifying for leave to remain on private life grounds under Rule 276ADE(1)(vi) on the ground that there would be very significant obstacles to her reintegrating into life in Nigeria with her children.
19. The claimant presented her asylum claim in 2012. She was given a screening interview on 23 November 2012 and she attended a substantive asylum interview on 18 December 2012. In repudiating her claim in the subsequent refusal letter of 21 December 2012, the Secretary of State took into account the Country of Origin Information Service Report for Nigeria dated 6 January 2012.
20. The claimant's claim was that she did not have any family or friends remaining in Nigeria. She did not know her father, and her mother had abandoned her when she was born. She said her mother's relative, Aunt P, had brought her up in Benin City. She did not know where she was now because she had lost contact with her. She had left school at around the age of 12 and a few years later she had learnt hairdressing.

In 1994 she had married a native doctor, "C", and had lived with him in Benin City. Her problems began in Nigeria in early December 1999 when C died. Another native doctor said that the chief had been killed by witchcraft. The claimant, who was the chief's seventh and youngest wife, was accused by the other wives, children and family of being a witch and of killing the chief by witchcraft. This was because she had slept in the room with him the day he died. She was locked in a room with the chief's body for over a week. Approximately four to five times a day the chief's family came to the room and beat her with sticks, canes and brooms in an effort to get her to confess that she had killed him with her witchcraft. She claimed that she had scars from these beatings. Eventually she had managed to escape from the house with the help of the chief's servant.

21. She went to the house of a friend of hers called E which was between 30 and 45 minutes away on foot. She took a bus with E to E's aunt's house in Port Harcourt, which was in another state. E's aunt was already aware she had been accused of killing the chief with witchcraft, and scolded E for bringing her to her house. She felt that E was putting her life at risk. The aunt said that she had a friend in Lagos that she would take her to. She travelled to Lagos by bus with E and her aunt. They took her to Aunt A, who was a friend of E's aunt. Aunt A agreed to help her. She said that the chief had been a very popular native doctor, and it would only be a matter of time before people knew that she was staying in Lagos. The claimant stayed with Aunt A while she arranged travel documents. Aunt A said she would bring her to the UK because she already had plans to travel there. She travelled to the UK with Aunt A on 24 December 1989 using someone else's passport with her picture on it.
22. In the year 2000, shortly after she arrived in the UK, she said that Aunt A had told her that she owed her £10,000, which she had to repay through engaging in prostitution. Aunt A took her to live with her friend, Aunt M, in Dagenham where she worked as a prostitute.
23. Approximately two weeks later, Aunt A returned to Nigeria. Eventually, in the summer of 2000 the claimant escaped from Aunt M. She said she had not heard from either Aunt M or Aunt A since escaping from Aunt M's house in the year 2000. She said she had never reported Aunt M or Aunt A to the police in the UK because she was worried that the police would send her back to Nigeria. The father of her two children was from Nigeria. At the time of the asylum interview she had not seen him for four and a half years. The children did not have contact with their father, and she did not know where he was.
24. On the one hand, she claimed not to have worked in the UK, but to have relied on charity from friends, the church and the Red Cross. On the other hand, she said that she had worked in the UK as a childminder and by plaiting people's hair in return for food, clothes and money. When she applied for ILR on 7 September 2010, she claimed she had worked as a childminder.
25. In the refusal letter, the Secretary of State gave detailed reasons for rejecting the claimant's account of her past experiences, including her claim to have been coerced into prostitution in the UK and of being accused of witchcraft in Nigeria. As to the

latter, it was noted that she did not claim to have heard from C's family since her alleged escape in December 1999. She had provided no evidence that C's family were still looking for her. The claimed events had taken place thirteen years ago, and she had not submitted any evidence in support of this part of her claim. It was further noted that she had never approached the police in Nigeria. But even if her claim was taken at its highest, and it was accepted C's family wanted to kill her for being a witch, it was considered that sufficiency of protection and internal relocation were both viable options for her.

26. On the topic of internal relocation, it was put to her in interview that she could relocate to another city like Abuja or Lagos. She had claimed the oracle (a spirit) would tell her former husband's family as soon as she returned to Nigeria. When asked if there were any other reasons why she could not relocate to a big city like Abuja, she said no.
27. It was not accepted that C's family would be informed of her return to Nigeria through the oracle, or that the oracle would notify them of her location. It was not accepted therefore she could not relocate to Abuja, Lagos or anywhere else in Nigeria, particularly when she had been able to relocate from Nigeria to the UK, a country to which she had no cultural ties upon entry.
28. On the topic of assisted voluntary return, the Secretary of State said that Refugee Action facilitated three programmes which the claimant could potentially utilise. These were VARRP, AVRIM and AVRFC. The latter provided assistance for families and children to return to their country of origin. For all programmes, Refugee Action could arrange travel documentation, and provide assistance at the airport in the United Kingdom, arrange a flight to the country of origin and help with onward transport to her final destination. Under VARRP, the claimant might qualify for reintegration and support worth £1,500. Under AVRFC each family member might qualify for reintegration and support worth £2,000, including a £500 relocation grant per person given in cash at a UK airport.
29. The claimant repeated her asylum claim in her oral evidence before me, although with some variations and additions. One of the reasons she was accused of being responsible for killing C by witchcraft was that she was hairy and she had a beard. (No facial hair was visible to me.) When she escaped, her friend took her to her sister, not her aunt, in Port Harcourt. This sister in Port Harcourt sent her to a friend, not a relative, in Lagos where she thought that the claimant would not be traceable, and therefore would be safe. She could not say how long she had stayed in Lagos. But it was a matter of months, not weeks.
30. The claimant was not credible in her account of past persecution for the reasons given in the letter refusing her asylum application, a decision against which the claimant has not pursued an appeal. The claimant's account does not gain credibility through repetition, particularly as there are material respects in which the latest account diverges from the account given to the Home Office in 2012.
31. Mr Staunton elicited from the claimant in cross-examination that most of her hairdressing clients are members of the congregation of the Catholic Church where

she worships, and that many of them are part of a Nigerian diaspora, albeit that other members of the congregation hail from other parts of West Africa and also from Caribbean countries such as Jamaica.

32. In addition, on her own account, the claimant was able to access help and support from the wider community in Nigeria in order to “escape” from her deceased husband’s family in Benin City. The claimant has displayed considerable resourcefulness in establishing a life for herself in the UK, despite entering the country illegally and never having permission to work here.
33. For the above reasons, I find that there are not very significant obstacles to the claimant’s reintegration into life in Nigeria, despite her having been absent from the country for over sixteen years and despite her having two dependent children to look after as well as herself. In addition to the support which she can access from Refugee Action, as set out in the asylum refusal letter, the claimant can reasonably be expected to access support from a support network provided by the Catholic Church in Nigeria and/or from friends or relatives of members of the Nigerian diaspora here with whom the claimant has developed a close association over the years as a result of worshipping at the same church and also providing hairdressing services in order to help support herself and the children.
34. Turning to an Article 8 claim outside the Rules, I accept that questions 1 and 2 of the **Razgar** test should be answered in the claimant’s favour. Questions 3 and 4 of the **Razgar** test must be answered in favour of the Secretary of State. On the crucial question of proportionality, the best interests of the children are a primary consideration. For the purposes of Section 117B(6) of the 2002 Act, both children are qualifying children as both of them have accrued over seven years’ residence in the United Kingdom.
35. In deciding whether it is reasonable for the children to relocate to Nigeria with their mother, who has no right to remain, I take into account the relevant jurisprudence.
36. **EV (Philippines) v SSHD [2014] EWCA Civ 874** provides the most recent guidance from the senior courts on the approach to best interests and the question of reasonableness. Clarke LJ said:
 34. In determining whether or not, in a case such as the present, the need for immigration control outweighs the best interests of the children, it is necessary to determine the relative strength of the factors which make it in their best interests to remain here; and also to take account of any factors that point the other way.
 35. A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in

that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens.

36. In a sense the tribunal is concerned with how emphatic an answer falls to be given to the question: is it in the best interests of the child to remain? The longer the child has been here, the more advanced (or critical) the stage of his education, the looser his ties with the country in question, and the more deleterious the consequences of his return, the greater the weight that falls into one side of the scales. If it is overwhelmingly in the child's best interests that he should not return, the need to maintain immigration control may well not tip the balance. By contrast if it is in the child's best interests to remain, but only on balance (with some factors pointing the other way), the result may be the opposite.
37. In the balance on the other side there falls to be taken into account the strong weight to be given to the need to maintain immigration control in pursuit of the economic well-being of the country and the fact that, *ex hypothesi*, the applicants have no entitlement to remain. The immigration history of the parents may also be relevant e.g. if they are overstayers, or have acted deceitfully.

37. Lewison LJ said:

49. Second, as Christopher Clarke LJ points out, the evaluation of the best interests of children in immigration cases is problematic. In the real world, the appellant is almost always the parent who has no right to remain in the UK. The parent thus relies on the best interests of his or her children in order to piggyback on their rights. In the present case, as there is no doubt in many others, the Immigration Judge made two findings about the children's best interests:
- (a) the best interests of the children are obviously to remain with their parents; [29] and
 - (b) it is in the best interests of the children that their education in the UK [is] not to be disrupted [53].
50. What, if any, assumptions are to be made about the immigration status of the parent? If one takes the facts as they are in reality, then the first of the Immigration Judge's findings about the best interests of the children point towards removal. If, on the other hand, one assumes that the parent has the right to remain, then one is assuming the answer to the very question the Tribunal has to decide. Or is there a middle ground, in which one has to assess the best interests of the children without regard to the immigration status of the parent?

38. The judge went on to analyse **ZH (Tanzania) v Secretary of State for the Home Department** [2011] UKSC 4 in order to elicit an answer to this question. He reached the following conclusion:

58. In my judgment, therefore, the assessment of the best interests of the children must be made on the basis the facts are as they are in the real world. One parent

has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?"

On the facts of **ZH** it was not reasonable to expect the children to follow their mother to Tanzania, not least because the family would be separated and the children would be deprived of the right to grow up in the country of which they were citizens. That was a long way from the facts of the case before them. No one in the family was a British citizen. None had the right to remain in the country. If the mother was removed, the father had no independent right to remain. With the parents removed, then it was entirely reasonable to expect the children to go with them:

Although it is, of course a question of fact for the Tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world.

Jackson LJ agreed with both judgments.

39. The "hypothetical" approach sanctioned by Christopher Clarke LJ is in line with the guidance given by the Upper Tribunal in **MK (India)** which he cites with approval. In **MK**, the Upper Tribunal emphasised the need to conduct the initial best interest assessment without any immigration control overtones. These only came into play when the decision maker moved on to a wider proportionality assessment.
40. However, the "real world" approach is not unprecedented. In particular, it is reflected in the leading speech of Lord Hodge in **Zoumbas v Secretary of State [2013] UKSC 74**, where the Supreme Court dismissed an appeal against removal brought by a Congolese family comprising Mr and Mrs Zoumbas and two daughters, who had been born in the United Kingdom on 3 February 2007 and 14 April 2011 respectively. At paragraph [24] Lord Hodge said:

There is no irrationality in the conclusion that it was in the children's best interests to go with their parents to the Republic of Congo. No doubt it would have been possible to have stated that, other things being equal, it was in the best interests of the children that they and their parents stayed in the United Kingdom so that they could obtain such benefits as healthcare and education which the decision maker recognised might be of a higher standard than would be available in the Congo. But other things were not equal. They were not British citizens. They had no right to future education and healthcare in this country. They were part of a close-knit family with highly educated parents and were of an age when their emotional needs could only be fully met within the immediate family unit. Such integration as had occurred into United Kingdom society would have been predominantly in the context of that family unit. Most significantly, the decision maker concluded that they could be removed to the Republic of Congo in the care of their parents without serious detriment to their wellbeing.

41. Thus the assessment of reasonableness is a holistic one, and the immigration status and history of the parents is a relevant consideration, following **EV (Philippines)**.

The fact that there is a qualifying child, either because the child has accrued seven years residence in the UK or because the child is a British national, is not a trump card, as otherwise there would not be a requirement to go on to consider whether, nonetheless, it is reasonable to expect the child to leave the United Kingdom.

The relationship between s117B(6) and the Rules

42. In **AM (S117B) Malawi [2015] UKUT 260 (IAC)** the Tribunal held that the duty of the First-tier Tribunal was quite clear. The First-tier Tribunal was required to have regard to considerations listed in Section 117B. It had no discretion to leave any of those considerations out of account, if it was a consideration that was raised on the evidence before it. The Tribunal continued in paragraph [13]:

There is also in our judgment no requirement that the FtT should pose and answer the same question more than once, simply as a matter of form. Thus since both paragraph 276ADE(1)(iv) of the Immigration Rules, and S117B(6), both raise the same question in relation to a particular child, of whether or not it would be reasonable to expect that child to leave the UK: it is a question that need only be answered once.

Disruption to education

43. The facts of **AM** were that AM had entered the United Kingdom in September 2006 as a student. His last grant of leave to remain had expired on 2 December 2012. In the meantime, his wife and eldest daughter were granted entry clearance to join him as dependants in January 2007, and a second child was then born to the couple in the UK on 3 April 2011. All the family were citizens of Malawi. As was held by the Upper Tribunal at paragraph [35], the eldest child was a qualifying child as defined by Section 117D(1) by virtue of entry to the UK in January 2007. It was not in dispute before the First-tier Tribunal that she had lived in the UK for a continuous period of seven years or more at the date of the appeal hearing, and as a result the First-tier Tribunal was required to consider her position by reference to Section 117B(6). There was also no dispute that the appellant as her father had a genuine and subsisting parental relationship with his eldest daughter, and thus the only issue was whether or not it would be reasonable to expect her to leave the UK. At paragraph [39] the Tribunal said:

There was no reason to infer that any interruption of the education of the elder child upon return to Malawi would be any more significant than that faced by any child forced to move from one country to another by virtue of the careers of their parents. Nor should the difficulties of a move from one school to another become unduly exaggerated. It would be highly unusual for a child in the UK to complete the entirety of their education within one school. The trauma, or excitement, of a new school, new classmates and new teachers is an integral part of growing up. In too many appeals the FtT is presented with arguments whose basic premise is that to change a school is to submit a child to a cruel and unduly harsh experience.

44. The Tribunal went on to find that the judge was entitled to conclude, as she did, that there was every reason to suppose that both children would be able to access both primary and secondary education in Malawi. There was no evidential basis on which the judge could find either of them would be denied the opportunity of

tertiary education, and the ability to access it if they attained the educational threshold requirements.

The Best Interests of the Claimant's children

45. Overall, I find that the best interest considerations militating in favour of the children returning to Nigeria with their mother as a family unit outweigh the best interest considerations which favour them remaining here. The children are nationals of Nigeria, and so by relocating to Nigeria they will be able to enjoy the benefits of Nigerian citizenship, and the benefit of being brought up for the remainder of their minority in the social and cultural milieu from which both their parents spring. They have not accrued seven years' residence from the age of four, and they are both young enough to adapt to life in Nigeria with the support of their mother. Since they have been partially brought up within a Nigerian diaspora, I find that the culture and society in Nigeria, where English is widely spoken, will not be alien to them. As of July 2014 Child T was in Class 2 and Child V was in Class 1 of a Catholic Primary School. Both of them received glowing end of year school reports. They are clearly flourishing at school, and are making good academic progress, as confirmed by the head teacher of the school in a letter dated 28 April 2015. But they have not reached a critical stage of their education (such as being about to take GCSEs), and they can continue their education in Nigeria. The claimant is a good and devoted parent (according to the head teacher), and I attach no credence to the suggestion that she will not properly care for the children in Nigeria.
46. I also attach no credence to the claimant's evidence that her second child has facial hair which will make her vulnerable to accusations of being a witch. The claimant has not sought to discharge the burden of proving, even to the lower standard of proof appropriate to protection claims, that her account of past persecution is true, including her claim to have been accused of being a witch because she had a beard; and so her evidence about her second child, which is wholly unsupported by evidence from an independent source, presents as a complete fabrication.

Wider Proportionality Considerations

47. In the wider proportionality assessment, it is in the claimant's favour that she and the children all speak English. But they are not financially independent, and the children are being educated here at public expense. The claimant has established private and family life here unlawfully, and she has aggravated her immigration offending by working illegally. She has testimonials as to her good character from, among others, her parish priest and the head teacher of the primary school which the girls attend. But under the statute little weight can be given to a private life which has been built up while a person's status in the UK is unlawful.
48. So I find it is reasonable to expect the qualifying children to return to Nigeria with their mother, and I consider that the decision appealed against strikes a fair balance between, on the one hand, the rights and interests of the claimant and the children, and, on the other hand, the wider interests of society. It is proportionate to the legitimate public end sought to be achieved, namely the protection of the country's economic wellbeing and the prevention of disorder.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and the following decision is substituted: this appeal is dismissed under the Rules and also outside the Rules under Article 8 ECHR.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the claimant. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Monson