



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/02881/2017

THE IMMIGRATION ACTS

Heard at Field House
On 6 August 2018

Decision & Reasons Promulgated
On 21 August 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

MRS C M ANYAONU

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr P Richardson, Counsel, instructed by Nasim & Co Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nigeria. On 18 May 2018 Judge Chana of the First tier Tribunal (FtT) dismissed her appeal against the decision made by the respondent on 2 February 2017 refusing leave to remain in the UK. The appellant is married to a British citizen and they have two children born in May 2016 and September 2017 respectively, both British citizens.

2. Despite noting the guidance given by the Upper Tribunal al in **SF and Others** (Guidance, post-2014 Act) Albania [2017] UKUT 00120 (IAC), Judge Chana simply concluded that the appellant's exclusion from the UK would not breach the right to respect for family life of her, her partner and her children. Her only reason appears to be that she was satisfied that the appellant had attempted to subvert the requirements of the Immigration Rules by coming to the UK as a visitor when she intended to remain permanently if she could.
3. The appellant's grounds of appeal contended that the judge erred in failing to apply the respondent's own policy and that the appellant's misconduct in the manner of her entering the UK was not of the level of gravity to bring her within the exceptions outlined in this policy for those with a very poor immigration history or persistent criminality.
4. Mr Bramble stated at the outset that the respondent agreed that the judge had erred in law and also agreed with the appellant's grounds that she was entitled to benefit from the respondent's policy on parents of British citizen children, notwithstanding her immigration misconduct. There could not now be said to be a public interest to be weighed against the appellant
5. In light of Mr Bramble's concessions, I conclude:

The decision of the FtT judge is set aside for material error of law.

The decision I re-make is to allow the appellant's appeal.

Signed



Date: 7 August 2018

Judge of the Upper Tribunal