



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/07905/2016
HU/07914/2016

THE IMMIGRATION ACTS

Heard at Field House by video link with Decision & Reasons Promulgated
Manchester
On 25 May 2018 On 6 June 2018

Before

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

Between

**MRS R O
MISS H O
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Nicholson, Counsel, instructed by Greater Manchester
Immigration Aid Unit
For the Respondent: Mr G Harrison, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellants, both citizens of Nigeria, have an appeal pending against the decision of the respondent made on 12 January 2016 refusing them leave to remain on private and family life grounds. Their original appeal was heard by July Lloyd of the First tier Tribunal who in a decision of 31 July 2017 dismissed it. However, following a hearing

before me in Liverpool on 15 March 2018, I set aside Judge Lloyd's decision for material error of law. Put shortly, the judge failed to apply the guidance set out in **MA (Pakistan)** [2016] EWCA Civ 705 in respect of a child who has been in the UK for over seven years. In my decision sent on 8 April 2018 I concluded that I was not in a position to re-make the decision there and then: I stated:

"8. I am not persuaded to remit the case to the FtT as there is no dispute on the factors regarding the appellants' circumstances in the UK. However, Mr Nicholson raised the matter of the current accuracy of the judge's assessment that the appellants would be able to look to the extended family in Nigeria for emotional and financial support. I consider it only fair that the appellants are afforded an opportunity to update the evidence they seek to rely on as regards potential support from family members if they have to return to Nigeria.

9. However, I do not consider it a proper use of resources to direct the appellants' solicitors to commence steps to obtain such particulars until there has been a further CMR before me (which I will instruct to be fixed for Field House in early May). My reason for saying this is that it may very well be that by the date of this CMR the respondent will decide to concede the appeal on the basis of **SF and Others** [2017] UKUT 120 (IAC), in light of the fact that in less than two weeks the second appellant falls eligible for British nationality. Indeed, it may be that the respondent may be able to reach a view on the matter prior to the CMR."

2. The case was set down for a CMR hearing which at the request of the appellant's representatives took place by video link.
3. At the hearing Ms Ahmad apologised for the fact that the respondent had not been able to give consideration to my direction in time for the hearing. Her primary submission was to request more time for the respondent to consider the appellants' case. Her secondary submission was that if I was minded to proceed today with the hearing she would accept that as the second appellant was now entitled to British citizenship the first appellant stood to benefit from Home Office policy on parents of British citizen children. She noted that the latest version of the policy, dated 22 February 2018, was in very similar terms to that which was set out in **SF and Others**. Mr Nicholson submitted that I should not permit the respondent more time and that I was in a position to proceed to re-make the decision on both appeals by applying the guidance in **SF and Others**.
4. I refused Ms Ahmad's primary submission. The respondent had been notified on 6 April 2018 that the case was to be listed for a CMR in mid-April or as soon as possible thereafter and has been aware since 6 April that I had directed that she reconsider the appellants' cases to decide whether the first appellant stood to benefit from Home Office policy and whether the second appellant was entitled to succeed in her appeal as a person entitled to British citizenship. She has had ample time in which to respond. That is not a criticism of Ms Ahmad who was simply representing on behalf of the respondent; but from the account she gave of inquiries she had made, it is clear that the respondent has not shown diligence.

5. It is clear from my directions that I was seeking to avoid the necessity for a further hearing in light of the evident application to the appeal (once the decision was listed for a hearing to re-make the decisions) of the Home Office policy set out by the Upper Tribunal in **SF and Others**. I consider that I have sufficient information before me to proceed to re-make the decision without further ado. Having set aside the decision of Judge Lloyd, I must re-make the decision on the appeal on the basis of the situation and factual circumstances as at the date of hearing before me.
6. As of the date of hearing before me the second appellant has become entitled to British citizenship. Hence there is no longer any public interest to be weighed against her Article 8 right to respect for family and private life. She is entitled to succeed in her appeal on that basis.
7. As of the date of hearing before me, the first appellant has become (or will soon become) someone who falls within the terms of the Home Office policy on parents of British citizens. Ms Ahmad specifically stated that there were no reasons of criminality or very poor immigration history that would prevent the first appellant from benefiting from the said policy. Accordingly, there is no longer any public interest to be weighed in the balance against the first appellant's right to respect for family and private life. The first appellant's appeal is also allowed for that reason.

6. To conclude:

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

The decision I re-make is to allow the appeals of both appellants on Article 8 grounds.

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 him 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.

Signed:

Date: 30 May 2018



Dr H H Storey
Judge of the Upper Tribunal