



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/15932/2016
HU/15935/2016

THE IMMIGRATION ACTS

Done at Field House
On 23 August 2018

Decision & Reasons Promulgated
On 30 August 2018

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

OMOBOLAJI GBOLAHAN OYEGUNLE
BABATOMIWA MICHAEL AKINTUNDE OYEGUNLE
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. These appeals were determined without a hearing pursuant to Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
2. The appellants are citizens of Nigeria. The first appellant is the father of the second appellant who was born in 2007. They appeal against a decision of the First-tier Tribunal dismissing their appeals against the decision of the Secretary of State on 9 June 2016 to refuse them leave to remain in the United Kingdom on private and family life grounds.
3. Although the case clearly impacts on the welfare of the child I see no need for an anonymity order. The facts are not deeply personal or in any way embarrassing.
4. Further, for reasons that will become apparent I consider it appropriate to make a short judgment in this case. The grounds of appeal that prompted the grant of permission

were settled by Mr John Walsh of Counsel who is well-known to the Tribunal and is very experienced in this area of work. His grounds were particularly apposite. At the risk of over simplification by extreme summary he makes two points.


5. First, he says that the First-tier Tribunal was wrong in law to dismiss the appeal when it had previously been accepted that it would be wrong to expect the second appellant to leave the United Kingdom. The only discernible relevant change in circumstances since that decision is that the second appellant had now lived in the United Kingdom for five *more* years which was no reason at all for dismissing the subsequent appeal. I find this ground extremely persuasive.
6. The second ground is that the judge erred by not having regard to the fact that the child was about to become a British citizen. I am less impressed by the second ground than the first but it raising it was an appropriate way of drawing to the Tribunal's attention that the second appellant was in fact registered as a British citizen on 7 March 2018 which was before the decision that is appealed was promulgated although it is not clear that the fact of registration was drawn to the attention of the First-tier Tribunal Judge.
7. Permission to appeal was granted pithily by First-tier Tribunal Judge Grimmett and reading her grant of permission caused me to give directions on 19 July 2018 effectively expediting the service of the Rule 24 notice. The Rule 24 notice was served on 9 August 2018 and stated unequivocally that the respondent:

“... does not oppose the appellants' grounds on which the application for permission to appeal has been sought and concedes there is an error of law in the determination of the Judge of the First-tier Tribunal [name], such that it should be set aside”.
8. In the circumstances I have no hesitation in setting aside the decision of the First-tier Tribunal for error of law.
9. The Rule 24 notice then refers to Rule 17(1)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and refers to the respondent seeking to “withdraw the decision of 9 June 2016”.
10. That, with respect, is misconceived. Rule 17 is not about withdrawing decisions but about withdrawing cases that are before the Tribunal. In the circumstances I permit the Secretary of State to withdraw his case with the consequence that I allow the appeal against the decision of the Secretary of State.

Notice of Decision

11. I set aside the decision of the First-tier Tribunal and substitute a decision allowing the appeals of the appellants against the decision complained of.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 23 August 2018