



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number:
HU/01085/2017**

THE IMMIGRATION ACTS

Heard at Field House

On 10 January 2019

**Decision & Reasons
Promulgated**

On 18 January 2019

Before

Deputy Upper Tribunal Judge MANUELL

Between

**[N A]
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Ohanugo, Solicitor (Moorehouse Solicitors)

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DETERMINATION AND REASONS

1. Permission to appeal was granted by Deputy Upper Tribunal Judge Eshun on 27 November 2018 against the decision to dismiss the Appellant's Article 8 ECHR appeal

made by First-tier Tribunal Judge Lucas in a decision and reasons promulgated on 15 June 2018.

2. The Appellant is a national of Nigeria, who had entered the United Kingdom as a Tier 4 (General) Student in 2008. Subsequently she was refused further leave to remain as a spouse. Her appeal to the First-tier Tribunal was dismissed and she became appeal rights exhausted on 16 September 2014. On 25 January 2016 the Appellant applied for leave to remain on human rights grounds, which was refused by the Secretary of State for the Home Department on 21 December 2016. The Appellant has four dependent Nigerian children, respectively born on [~] 2002, [~] 2009, [~] 2011 and [~] 2015.
3. Judge Lucas noted the previous determination of the First-tier Tribunal dated 12 June 2014, where the Appellant's appeal had been dismissed. There it had been found that the Appellant had continuing ties to Nigeria, having left aged 33. She had obtained financial sponsorship to study in the United Kingdom. The Appellant's children (apart from the last born) had then been aged between five and three. Judge Lucas accepted that the Appellant had HIV but found that treatment was available in Nigeria. The threshold in N [2005] UKHL 31 was not reached. Three of the Appellant's children were "qualifying children" however the Appellant would remain their sole carer whether they lived in the United Kingdom or in Nigeria. Their best interests were to remain with their mother. There would be disruption to their education yet their education could continue in Nigeria, where it was obvious that support and family were available. There were no exceptional circumstances and there was no Article 8 ECHR disproportionality. Hence the appeal was dismissed.
4. Permission to appeal was refused by First-tier Tribunal Judge PJM Hollingworth on 3 September 2018 but was granted by Deputy Upper Tribunal Judge Eshun because it was considered arguable that the judge had not correctly applied the provisions of section 117B(6) of the Nationality, Immigration and Asylum Act 2002 and MA (Pakistan) [2016] EWCA Civ 705 when considering whether it was reasonable for the children to leave the United Kingdom. (It should be noted that MA (Pakistan) has since been disapproved by the Supreme Court in KO (Nigeria) [2018] UKSC 53.)
5. Mr Ohanugo for the Appellant relied on the grounds submitted and the grant of permission to appeal. In

summary he argued that the judge had not directed himself correctly and had not mentioned section 117B(6) of the Nationality, Immigration and Asylum Act 2002 (as amended). There were qualifying children and their best interests assessment was inadequate. The appeal should be allowed and the decision remade in the Appellant's favour.

6. Mr Bramble for the Respondent submitted that there was no material error of law in the First-tier Tribunal's determination and the judge's findings if brief had all been available to him. It was true that there had been no express mention by the judge of section 117B(6) but the judge had stated the applicable principles accurately and had gone on to apply them. More importantly, the judge had in effect anticipated KO (Nigeria) [2018] UKSC 53 (decided after permission to appeal had been granted). The judge had considered, in a "real world" setting, the reasonableness of the children going to Nigeria. The judge had found that they could go and it was reasonable for them to do so. That had to be the correct focus. The appeal should be dismissed.
7. Mr Ohanugo reiterated the points he had made earlier by way of reply.
8. The grant of permission to appeal was in the tribunal's view an over generous one. The submissions advanced on behalf of the Appellant were all fully dealt with and disposed of by the very experienced First-tier Tribunal Judge. The judge correctly identified the previous determination as his starting point. There were relevant findings which stood. In fact, there was very little new evidence for the judge to consider, particularly as the Appellant continued to pursue bad points which had already been conclusively determined against her. This goes some way to explaining what might otherwise be thought to have been a somewhat sparse determination.
9. The judge went on to find that the best interests of the children were to remain with their mother. Crucially, contrary to the Appellant's contention, her health needs could be met in Nigeria, so by necessary implication her ability to care for her children would not be impaired. The children's needs would be met in Nigeria, the country of their heritage, culture and nationality, where support and family were available, and their education would continue. By necessary implication it was reasonable for the children to return to Nigeria (in the case of the eldest child) or to go

there (in the case the United Kingdom born children.) As Mr Bramble submitted, the judge had in effect anticipated the decision in KO (Nigeria) [2018] UKSC 53.

10. In the tribunal's judgment the First-tier Tribunal Judge had reached sustainable findings, in the course of a balanced determination, which securely resolved the issues. The tribunal accepts the submissions made by Mr Bramble. The tribunal finds that there was no error of law and the onwards appeal must be dismissed.

DECISION

The appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged.

Signed

Dated 10 January 2019

Deputy Upper Tribunal Judge Manuell