



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/07829/2018 +5

THE IMMIGRATION ACTS

**Heard at Field House
On 10 May 2019**

**Decision & Reasons Promulgated
On 24 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

**MRS O O
(ANONYMITY DIRECTION MADE)**

First Appellant

and

**MISS O O O
(ANONYMITY DIRECTION MADE)**

Second Appellant

and

**MR O K O
(ANONYMITY DIRECTION MADE)**

Third Appellant

and

**MISS T O O
(ANONYMITY DIRECTION MADE)**

Fourth Appellant

and

**MR M T A O
(ANONYMITY DIRECTION MADE)**

Fifth Appellant

and

**MR D O A O
(ANONYMITY DIRECTION MADE)**

Sixth Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

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For the Respondent: Mr S Walker, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria who appealed a decision of the Respondent to refuse her leave to remain in the United Kingdom. The Appellant has five dependants all of whom are minors and dependent upon her appeal.
2. Her appeal was heard by Judge of the First-tier Tribunal O'Garro who, in a decision promulgated on 11 March 2019, dismissed it. The Appellant sought permission to appeal. It was granted by Judge of the First-tier Tribunal SPJ Buchanan on 17 April 2019. His reasons for so granting were: -
 - “1. The appellants seek permission to appeal, (in time), against a Decision of a FTTJ (Judge Cas O'Garro) who, in a Decision and Reasons promulgated on 11 March 2019, dismissed the appellant's appeal.*
 - 2. The Grounds of Appeal [GOAs] contend that the FTTJ arguably erred because: 6 “It is submitted that the FTT failed to follow the guidance given by the superior courts. The FTT's finding that removal of the two elder children appellant to Nigeria at a time when he is just about to sit crucial exams as reasonably blatantly disregards the guidance set down by the Court of Appeal and Upper Tribunal. This is very significant factors which carry considerable weight because it is recognised that in such circumstances removal would have deleterious consequences upon both appellants.”*
 - 3. At (42) the FTTJ addresses issues of proportionality in the context of an article 8 ECHR claim. At (45) he concludes: “I accept the appellant's two eldest children who are expected to take life changing exams next spring is at a crucial stage in their education but I am sure the respondent can delay any removal of the family unit until the two eldest children have completed their exams. The children can continue their education in Nigeria.”*
 - 4. Whereas the materiality of any error might be diluted by the effluxion of time since the date of hearing, it is arguable that the conclusion at (45) can only fairly be construed as determining that as at date of appeal on 23 October 2018, it would be disproportionate to remove two of the appellants. This is the argument contended in paragraphs 2-6 of the application.*
 - 5. For these reasons, I conclude that it is arguable by reference to the application that there may have been error of law in the Decision as identified in the application. I grant permission to appeal.”*
3. Thus, the appeal came before me today.

4. Prior to the hearing I noted that Paul John & Co Solicitors had written to the Tribunal on 30 April 2019 indicating that their client “will be going to court by herself”. At the outset of today’s hearing the Appellant confirmed that she was representing herself. I therefore fully explained the procedure to her. I provided her with a pen and paper and asked her to tell me at any time if there was anything that she did not understand where upon I would seek to explain further. She told me that she was ready to proceed. She wished to rely upon the grounds seeking permission to appeal.
5. Mr Walker urged me to accept that there was no material error whatsoever within Judge O’Garro’s decision. At paragraph 40 she had recorded that it was reasonable to expect the Appellant’s children to leave the United Kingdom along with the Appellant. She had done so with reference to the recent authority of **KO (Nigeria) v SSHD 2018 UKSC 53** and other relevant authority. The Judge had considered the best interests of the children. None are British citizens and at the time of the decision none had been in the United Kingdom for seven years. The Judge appreciated that the two eldest children were about to take examinations and referred the Respondent to this in her decision and her expectation that removal of the family unit would not take place until such examinations had taken place.
6. The Appellant sought to reargue the case that was before Judge O’Garro. She emphasised that she cannot return to her country of origin. She has nobody there to fall back upon. Her mother is aged and unable to support the Appellant and her children. There is nothing that she can do there. Indeed, she fears not being able to look after them. If she is returned it will be “tough and hard”. There was nothing further she wished to add in relation to the submissions made by Mr Walker.
7. There is within this decision no material error of law. Given the age of the children at the time of the decision and the fact that they are not British citizen children it was left to the Judge to consider all the factors that she did when carrying out the required balancing exercise. She has taken all the competing factors into account. She recognised, and catered for, the fact that two of the children were about to sit examinations. She has come to a decision that was open to be made on the totality of the evidence. The Appellant was unable to show any exceptional circumstances that would lead to any unjustifiably harsh consequences if returned.
8. Accordingly, there is no material error within the Judge’s decision.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

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: 23 May 2019

Deputy Upper Tribunal Judge Appleyard