



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/01561/2020
(P)**

THE IMMIGRATION ACTS

**Decision Under Rule 34 Without a hearing
On 29th September 2020** **Decision & Reasons Promulgated
On 05th October 2020**

Before

UT JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FA

Respondent

DETERMINATION AND REASONS

1. Parties are as above, but the rest of this determination refers to them as they were in the FtT.
2. This determination is to be read with:
 - (i) The SSHD's decision dated 9 January 2020.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge Farrelly, promulgated on 6 March 2020.

- (iv) The SSHD's grounds of appeal to the UT, stated in the application for permission to appeal dated 10 March 2020.
 - (v) The grant of permission by the FtT, dated 27 April 2020.
 - (vi) The UT's directions, issued on 28 July 2020, with a view to deciding without a hearing (a) whether the FtT erred in law and (b) if so, whether its decision should be set aside.
 - (vii) The SSHD's response, dated 31 July 2020.
 - (viii) The appellant's response, dated 12 August 2020.
3. In light of all the above, the UT may now fairly and justly, in terms of rules 2 and 34, decide questions (a) and (b) above without a hearing.
 4. The crux of the SSHD's decision (at pages 3-5 of 7) was that, having regard to the best interest of his daughter, her relocation with him to Nigeria would involve no exceptional circumstances or unjustifiably harsh consequences, and so could reasonably be expected.
 5. The FtT held to the contrary.
 6. The SSHD's grounds say at [1] that the judge failed to adequately consider the evidence; it is unclear on what basis he found it in the child's best interests to remain here; he would need to be sure of all the facts; and it "cannot be said that simply because she has been in the UK since birth, her best interests lie in remaining here".
 7. The judge had to decide on such evidence as he had before him. He did not have to attain certainty.
 8. The judge does say why he thinks it better for the child to stay here. See the summary at [4 (ii)] of the appellant's response, and the decision: [43], has started primary school here, has only known life in Glasgow; [44], removal to Nigeria would make contact with her mother very difficult (she being a national of the Czech Republic who had returned there and was in custody); [45], possibility of being taken into care were he to leave without her; [46], possible visits from her mother if she remains in the UK; [47], unlikelihood of her mother attempting to live in Nigeria; [48], better prospects of employment of the appellant in the UK; [49], insufficient for respondent to say educational facilities exist in Nigeria; a country where she has never been; English used, but no familiarity with other languages; no support from mother or extended family; [50], distinctive mixed race origins would make transition difficult; [51], not a UK national, but a European; educational, health service and other benefits; [52], no evidence of state supervision of child welfare in Nigeria; [53], unduly harsh to expect her to live in Nigeria.

9. Ground 1 does not fairly reflect the decision. Some factors listed are obviously stronger than others, and some might be debatable; but the decision is not based only on the child being here since birth.
10. Ground 2 says that the judge speculated, but his views are reasonable estimates of future possibilities; and the ground goes on to mere alternative guesses about mother and child coming together in Nigeria or in the Czech Republic.
11. Ground 3 says that the judge failed to consider that the child did not qualify to remain under the EEA Regulations, but he declined at [37] to deal with any such point. This ground leads nowhere.
12. Ground 4 complains vaguely that the judge did not go through the steps required by the rules and by statute, but that does not fairly reflect his overall approach, which is reached in terms akin to the respondent's decision, although coming down on the other side. The appellant's response on this ground, at [7], is well taken.
13. There was a case to be made for the respondent that on the assumption of the appellant leaving the UK for Nigeria, it was reasonable to expect his daughter, for whom he was currently the sole carer, to go with him. As conceded for the appellant at [4 (ii)], the FtT's decision might be viewed as generous. The grounds of challenge, however, are only insistence and disagreement, and do not identify error in the decision on a point of law.
14. The decision of the First-tier Tribunal shall stand.
15. The FtT made an anonymity direction, which is preserved.



29 September 2020
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).**

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.