



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

Appeal Number: PA/09086/2018

THE IMMIGRATION ACTS

Heard at Bradford

On 20th January 2020

**Decision & Reasons
Promulgated**

On 30th January 2020

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**C O
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Smith of Counsel, instructed by Bankfield Heath Solicitors

For the Respondent: Mr McVeety, HOPO

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Bashir made following a hearing on 18th October 2018 at Bradford.

2. The appellant is a citizen of Ghana. She claimed asylum and humanitarian protection and permission to remain in the UK on human rights grounds but was refused by the respondent on 4th July 2018. The judge dismissed her appeal on all grounds.
3. The appellant sought permission to challenge the decision and was granted permission by the Upper Tribunal on 20th February 2019 having first been refused permission at the First-tier.
4. This matter first came before me on 24th May 2019. The appellant requested an adjournment of the appeal as she was in the process of applying for a British passport for her child which would be material to the outcome of the decision.
5. There was a Case Management Review on 2nd September 2019 when I was told that the passport application had not yet been processed.
6. At a further hearing on 18th November 2019 I was informed that a British passport had now in fact been issued to the child.
7. On that basis Ms Smith asked for leave to vary her grounds for appeal in order to challenge the judge's decision in relation to Article 8.
8. Mr Diwnycz, the Presenting Officer on that occasion had no objection and indeed accepted that the judge had erred in law.
9. Judge Bashir recorded at paragraph 52 of his determination that it had been asserted by the appellant that her child was entitled to British citizenship by virtue of his father's nationality at the date of his birth. The judge declined to make any finding with regard to the child's nationality.
10. He erred in law, first by failing to make a decision on a material matter and second, in that he appeared to have been operating on the basis of a mistake in fact. The judge believed that the appellant was not able to establish her child's British nationality when at all material times the respondent had the information before him which could establish that the child was indeed British.
11. Accordingly the decision was set aside.
12. At the hearing on 20th January 2020 Mr McVeety conceded that the appeal should be allowed under Article 8. On that basis Ms Smith confirmed that she was no longer pursuing the challenge in relation to the asylum claim.
13. Mr McVeety was right to concede this case. It is plainly not reasonable to remove this British child. On the findings of the original judge he suffers from a congenital heart condition for which he is still receiving treatment. Moreover on the findings of the judge the appellant has no familial support and no immediate accommodation or employment in Ghana. The child would therefore be removed to potential destitution.

14. This matter could and should have been resolved two years ago.

Decision

15. The original judge erred in law. His decision is set aside. It is remade as follows. The appellant's appeal on asylum grounds is dismissed. The appellant's appeal on human rights grounds is allowed.

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.

Deborah Taylor

Signed

Date 27 January 2020

Deputy Upper Tribunal Judge Taylor