



IAC-FH-CK-V1

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

Appeal Number: IA/11367/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29 October 2014**

**Determination Promulgated
On 28 November 2014**

Before

**THE HONOURABLE MR JUSTICE DAVIS
UPPER TRIBUNAL JUDGE ESHUN**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS RAMOTALAI AYOOLA OLAWUNMI AJOKE SOBANDE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr I Richards, Home Office Presenting Officer

For the Respondent: Mr A T Okunow, Supreme Solicitors

DECISION ON ERROR OF LAW

1. On 20 June of this year Ramotalai Sobande appeared before the First-tier Tribunal in Birmingham. The Tribunal determined in her favour that both she and her eldest child had established a private life in this country under the Immigration Rules and therefore allowed her appeal against the Secretary of State's refusal to give her leave to remain.

2. The Secretary of State applied for leave to appeal against that determination and leave was granted by another First-tier Tribunal Judge. The relevant part of the reasons is as follows: "The findings of the First-tier Tribunal are very brief and are not adequately reasoned." We say straightaway we agree with that analysis. The First-tier Tribunal considered the case of the mother, the respondent to this appeal, under paragraph 276ADE of the Immigration Rules, in particular subparagraph (vi). She was, so it was asserted, a person over the age of 18 who had lived continuously in the United Kingdom for less than twenty years but had no ties (including social, cultural or family) with the country to which she would have to go if required to leave the United Kingdom. The crucial issue in the case was whether she had "no ties" as defined in paragraph 276.
3. The finding of the First-tier Tribunal on that issue reads as follows at paragraph 21:

"The appellant has resided continuously in the UK for more than eight years. She was born and brought up in Nigeria. Although she speaks the language there is no continuing connection by way of family. I find that the distant cousins are not in contact with the appellant and the nature of their relationship does not amount to evidence of a continuing connection with Nigeria."
4. Nowhere in the determination is there any use of the language of subparagraph (vi) of paragraph 276ADE. There is no analysis of the social and cultural background of the respondent to this appeal. There is no indication in the reasoning within the determination that the First-tier Tribunal considered those issues at all. With respect to the First-tier Tribunal, the Tribunal appears to equate "ties" with "friends and family in Nigeria with whom the respondent remains in regular touch". That is not the language of the Rules and the reasoning was plainly inadequate. It is argued on behalf of the respondent today that the determination was "very well-reasoned". We concluded that that was a highly optimistic submission and we do not accept it.
5. The other limb of the determination was the determination in relation to the child, by then aged 9½, of the respondent, a child who had been born in Nigeria but entered the United Kingdom with the respondent. (There was an issue before us as to whether such entry had been unlawful ab initio or whether the respondent's presence became unlawful when she overstayed a visitor's visa. It is not necessary for our purposes to determine that issue. It is the case that the First Tier Tribunal proceeded on the former basis.) The consideration of the child identified the time he had spent in this country, the fact that he had attended school in this country and the fact that he would have no memory of Nigeria, having left there when he was 1. Those issues were discussed in advance of any consideration of the position of his mother and the determination simply concluded that "it would be unreasonable to remove him to Nigeria in the circumstances of this case".
6. We consider that that was not adequate reasoning, particularly since we have determined that the respondent mother potentially did not fall within subparagraph

(vi) of paragraph 276ADE. In those circumstances any return would be as a family unit.

7. For all of those reasons we consider that the determination cannot stand and it must be set aside. The Secretary of State concedes that the proper course is for this case to be remitted to the First-tier Tribunal to be reheard by a different judge. It may be that there will be other issues to be considered at the rehearing, not least the fact that a second child born to the respondent mother now has lived in this country for in excess of seven years. However, those are factual issues and will be a matter for the First-tier Tribunal to discuss and consider on its reconsideration.
8. Therefore we allow this appeal.

Signed

Date: **27 November 2014**

Mr Justice Davis