



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/03001/2014

**THE IMMIGRATION ACTS**

Heard at Manchester Piccadilly  
On 30 September 2015

Decision Promulgated  
On 13 October 2015

Before

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

Between

**OOA**  
**(ANONYMITY DIRECTION MADE)**

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Smith counsel instructed by GMIAU

For the Respondent: Mr A McVitie Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. An anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances I am satisfied that the order should continue.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge De Haney promulgated on 28 November 2014 which dismissed the Appellant's appeal against a refusal of asylum on all grounds .

### Background

3. The Appellant was born on 14 August 1971 and is a national of Nigeria. Her three children are her dependents in the appeal.
4. On 23 January 2012 the Appellant applied for asylum on the basis that she would be at risk of mistreatment by the family of the father of her three children.
5. On 20 April 2014 the Secretary of State refused the Appellant's application as it was not accepted that the Appellant or her children were at risk from the family of the father of her children in Nigeria as claimed; there was sufficiency of protection in Nigeria; internal relocation was a viable option; the decision was not disproportionate under Article 8 and there was no basis for a grant of leave outside the Rules.

### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge De Haney ("the Judge") dismissed the appeal against the Respondent's decision.
7. Grounds of appeal were lodged arguing :
  - (a) The Judge failed to make an adequate assessment of the Article 8 rights of the family and the best interests of the children.
  - (b) Procedural unfairness in dismissing the claim based largely on adverse credibility findings about matters and evidence never put to the Appellant.
  - (c) The adverse findings are flawed because the Judge made perverse findings of fact.
8. On 29 December 2014 First-tier Tribunal Judge Kinnell gave permission to appeal on all grounds.
9. At the hearing I heard submissions from Ms Smith on behalf of the Appellant that (a) Mr McVitie conceded that errors of law were made out and the decision should be set aside and remitted for a *de novo* hearing.
10. On behalf of the Respondent Mr McVitie confirmed that he accepted that material errors of law had been made. The Article 8 assessment which was one short paragraph at 47 of the decision was wholly inadequate. The Judge appeared to hold it against the Appellant's children that they had been a drain on the NHS when the evidence was that they had been the victims of crime, of abuse, and had thus called on the NHS. There was no consideration of Section 55 of the Borders, Citizenship and Immigration Act 2009. He accepted that there were issues raised by the Judge in his credibility findings that the HOPO had specifically identified that the Respondent was not pursuing and the Appellant did not have the chance therefore to address them. Finally he accepted that the Respondent had always conceded on the basis of clear evidence that there were two different men involved in this case, EO and MO, but the Judge erroneously concluded that they were one and the same person.

**Finding on Material Error**

11. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
12. I am satisfied that Mr McVitie was right to concede that those matters as set out in detail in the Ground of Appeal and summarised above amounted to material errors of law: it was not reasonably open to the Judge to conclude at paragraph 37 that MO and EO were the same person; the Article 8 assessment was wholly inadequate; it was procedurally unfair (paragraph 27 onwards) to base findings on matters that the Respondent did not seek to pursue and the Appellant was not given an opportunity to address.
13. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety. All matters to be redetermined afresh.
14. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:
  - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or*
  - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.*
15. In this case I have determined that the case should be remitted because the Appellant did not have a fair hearing due to procedural unfairness and inadequate findings. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.
16. I consequently remit the matter back to the First-tier Tribunal sitting at Manchester to be heard on a date to be fixed, before any First-tier Immigration Judge.

Signed

Date 30.9.2015

Deputy Upper Tribunal Judge Birrell