



**The Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal number: AA/11355/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On July 22, 2015**

**Decision and Reasons  
Promulgated  
On July 23, 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**MS SEKINA ABOSEDE BELLO  
(NO ANONYMITY DIRECTION)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

Appellant	Ms Ephraim-Adejumo, Counsel, instructed by Calices
Solicitors	
Respondent	Mr Walker (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Nigeria. The appellant and children applied for asylum. The appellant's children's appeals were refused without a right of appeal and the appellant's application was refused, with a right of appeal, by the respondent on November 28, 2014. At the same time a decision was taken to remove her as an illegal entrant.
2. The appellant appealed that decision on December 18, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. The matter came before Judge of the First-tier Tribunal Andonian on March 20, 2015 and in a decision promulgated on March 31, 2015 the Tribunal upheld the refusal and dismissed the appellant's appeals.
4. The appellant applied for permission to appeal on April 21, 2015 submitting the Tribunal had erred. Permission to appeal was granted by Judge of the First-tier Tribunal Andrew on May 5, 2015 on the grounds it was arguable that the Tribunal had not engaged with any of the medical evidence when considering what was in the best interests of the appellant's child.
5. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to make an order now.

### **PRELIMINARY ISSUE**

6. At the outset of the hearing I raised with Ms Ephraim-Adejumo the basis on which permission was being sought. The grounds of appeal were not clear but Ms Ephraim-Adejumo confirmed that permission was being sought on Article 8 grounds only on the basis that the Tribunal had failed to deal with the best interests of the children during the hearing and in its decision. Furthermore, the Tribunal had failed to have regard to evidence about the children's private life and had erroneously recorded the amount of money that was owed to the NHS.

### **ERROR OF LAW SUBMISSIONS**

7. Ms Ephraim-Adejumo submitted that the Tribunal had failed, in particular, to take into account the fourteen-year-old child's interests. The child had been present in court on the day of the hearing and the appellant's claim was based on what has happened to him. The Tribunal should have taken evidence from the child or sought his views. Lady Hale made clear in ZH (Tanzania) (FC) v SSHD [2011] UKSC 4 that a Tribunal plays an important part in discovering a child's views and the Tribunal should, in this current appeal, have sought the child's views in light of the fact that he was present. The Tribunal failed to carry out the appropriate assessment and based its refusal under Article 8 on its assessment of the appellant's own evidence and disregarded the evidence and other private life evidence that had been submitted. The Tribunal failed to carry out a proper proportionality assessment and as such there was an error in law.
8. Mr Walker rejected the claim that there had been an error. He noted the Tribunal was being criticised for not seeking evidence from a child witness but he submitted the fault, if any, lay with the appellant and her representatives. The child had not provided a witness statement and although he was at court a conscious decision had been taken not to call him. Witnesses can only give evidence where they have provided a written statement and it was therefore outside of the Tribunal's remit to request evidence from a witness who had not provided a statement. In any event, the Tribunal was fully aware of the child's position due to the documents that were before it and the Tribunal also heard the appellant's

representative's submissions. The Tribunal did have regard to the best interests of the children and concluded that their best interests would be with their mother. The issue for the Tribunal was whether that should be in the United Kingdom or Nigeria and the Tribunal gave reasons for saying removal to Nigeria would not be disproportionate. There was no material error of law and permission should be refused.

9. Having heard submissions, I asked Ms Ephraim-Adejumo what questions should have been put by the Tribunal to the child and Ms Ephraim-Adejumo indicated that the Tribunal should have sought his views on the possibility of being removed and what he had been up to in the United Kingdom and why he did not want to return to Nigeria.
10. I reserved my decision.

### **FINDINGS ON ERROR IN LAW**

11. The appellant lodged an application for asylum on behalf of herself and her children. For reasons I do not need to go into the children did not have a right of appeal in the United Kingdom and the appellant's appeal was the matter heard by the Tribunal earlier this year.
12. In a detailed decision the Tribunal examined the appellant's claim and in paragraphs [12] to [16] of its decision gave reasons for rejecting her claim. The Tribunal was unimpressed that the appellant did not know the name of the cult that was said to have abducted her son or how many members were in the cult. The Tribunal concluded she had provided limited details of the cult and further found that the fact she met with a person associated to the cult further undermined the credibility of the claim. The Tribunal went on to consider the alternative namely that the appellant's son was abducted but it rejected the claim as lacking credibility and gave its reasons.
13. The fact there has been no challenge to the Tribunal's findings on the asylum claim and the fact that permission to appeal is limited to Article 8 issues sets the background to this appeal.
14. Ms Ephraim-Adejumo criticised the Tribunal for not calling the witness and my attention was drawn to Lady Hale's comments in paragraphs [34] onwards of ZH. I have considered ZH but I am satisfied that the appellant was represented by both counsel and solicitors and if the appellant had wanted her son to give evidence then he would have provided a witness statement and a decision could then have been taken by the Tribunal as to whether he was needed to give evidence.
15. I reject the submission that the Tribunal erred by not asking the child any questions. The child had neither provided a witness statement nor been called or tendered to give evidence.
16. The Tribunal was aware of what he said because it had various documents. It was apparent that he did not wish to return to Nigeria. There was little else that could have been obtained from the child over and above what was already known. This was not a case where there was no evidence

presented to the Tribunal and the Tribunal did not know the child's view or account. There were medical reports from two different places that clearly set out the child's position. There were school reports and whilst the Tribunal did not refer to the reports I am satisfied those documents were available to the Tribunal and were considered as part of a private life assessment. None of the findings on private life were not open to the Tribunal.

17. The medical evidence in respect of this child covered the period November 2013 to November 2014. The most recent report made clear that the child was no longer suffering from post-traumatic stress. The medical report in respect of one of the other children was dealt with by the Tribunal. School reports and letters from football team do not on their own mean a child's best interest would now be in the United Kingdom.
18. This was a failed asylum application and the family were to be removed together. The Tribunal had found there was no risk and that the family itself could be returned. There was no evidence before the Tribunal that children could not be educated in Nigeria and there was no evidence that any necessary medical treatment was unavailable in Nigeria.
19. The burden of proof is on the appellant and the Tribunal was entitled to reach the conclusions it did and to make the findings that were made.
20. In all the circumstances I do not find there is any material error in this case and I dismiss the appeal.

### **DECISION**

21. There was no material error. I uphold the decision.




Signed:  
Deputy Upper Tribunal Judge Alis

Dated:

### **TO THE RESPONDENT FEE AWARD**

No fee award is made as the appeal is dismissed.



Signed:

Dated:

Deputy Upper Tribunal Judge Alis