



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
IA/07691/2014**

APPEAL NUMBER:

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated on**

On: 26 March 2015

On 21st April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS LINDA OBIAGELI NNATUANYA
NO ANONYMITY DIRECTION MADE**

Respondent

Representation

For the Appellant: Ms A Holmes, Senior Home Office Presenting Officer

For the Respondent: Mr D Metibemu, Legal Representative (Rhema Solutions)

DECISION TO REMIT

1. For the sake of convenience I shall refer to the appellant as the secretary of state and to the respondent as "the claimant."
2. The claimant is a national of Nigeria, born on 30 November 1979. She appealed with permission to the Upper Tribunal against the determination

of First-tier Tribunal Judge Rothwell, who dismissed her appeal under the Immigration Rules but allowed it under Article 8.

3. Although the Judge had regard to s.117B(2), (3) and (6), which she found “applied here” [35] there was no assessment or consideration given to s.117B(1) and (5) of the 2002 Act. Under the Act the Tribunal is directed to take into account the public interest in the maintenance of effective immigration control. Little weight should be given to a private life established by a person at a time when her immigration status is precarious.
4. Moreover, the Judge did not give reasons for finding that it would not be reasonable to expect the claimant's child to leave the UK, as opposed to reasons why it would be in his best interests to stay. There was no analysis or reasons given as to why the public interest considerations referred to did not apply in this case. The whole emphasis appeared to be that the child was not to be visited with the sins of his parents.
5. The skeleton argument before the First-tier Tribunal related only to paragraph 276ADE and paragraph EX.1 of the Immigration Rules. There was no further submission made with regard to Article 8. There is no reference at all to the decision of the Court of Appeal in EV (Philippines) and Others v SSHD [2014] EWCA Civ 874, where, at paragraph 58, Lord Justice Lewison stated that the assessment of the best interests of the child must be made on the basis that the facts are as they are in the real world. The ultimate question would be, is it reasonable to expect the child to follow the parent with no right to remain in the country of origin?
6. In assessing whether or not the public interests identified in s.117B outweighs the best interests of the child, it is necessary to determine the relative strength of the factors which made it in the child's best interests to remain here as well as factoring in those matters which pointed the other way.
7. The decision of the First-tier Tribunal was accordingly set aside.
8. At a hearing on 26 March 2015, both parties submitted that having regard to the extent of fact finding that would have to take place including the need to consider the case in accordance with the authorities and the 2002 Act, this was an appropriate case for the matter to be remitted to the First-tier Tribunal for the decision to be re-made.
9. I have had regard to the Senior President's Practice statement regarding the remitting of an appeal to the First-tier Tribunal for a fresh decision. I am satisfied that this is an appropriate case for remitting the appeal, having regard to the extensive amount of fact finding that would be required to take place.

Decision

The appeal is remitted to the First-tier Tribunal (Hatton Cross) for a fresh decision to be made. The agreed hearing date is for September 2015. The written instructions to the administration have been duly completed.

No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge Mailer

Date 15 April 2015