



IAC-AH-SAR-V1

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

Appeal Number: AA/07914/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 16 March 2016**

**Decision & Reasons
Promulgated
On 8 April 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**AE
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mrs Pettersen, a Senior Home Office Presenting Officer
For the Respondent: In person

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, AE, was born in 1975 and is a citizen of Cameroon. She

appealed to the First-tier Tribunal (Judge Turnock) against a decision of the respondent to remove her from the United Kingdom having refused her application for asylum. The First-tier Tribunal in a decision promulgated on 28 October 2015 dismissed the appeal on asylum and Articles 2/3 ECHR grounds but allowed it “to the extent that a lawful decision remains outstanding under Article 8 of the European Convention on Human Rights”. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The appellant attended in person with her children. Her English was good enough for me to communicate with her without the need of an interpreter. The issue may be briefly stated. The appellant has not appealed against the decision of the judge to dismiss her asylum and Articles 2/3 appeal. Likewise, she has not challenged the judge’s decision that she was not entitled to humanitarian protection. However, following the hearing the judge received a fax communication [97] which indicated that the appellant had given birth to a British child.
3. I find that the judge has taken the wrong course of action in remitting the matter to the Secretary of State to consider Article 8 ECHR. What Judge Turnock should have done is to have reconvened the hearing in the First-tier Tribunal at which the issue of the child and Article 8 ECHR might have been addressed by the parties/ their representatives. I therefore set aside the decision of the First-tier Tribunal but preserve the findings of fact. I dismiss the appeal on asylum and human rights (Articles 2/3) grounds, I find that the appellant is not entitled to a grant of humanitarian protection. Otherwise the appeal is returned to the First-tier Tribunal before Judge Turnock sitting in Bradford on a date to be fixed which he may determine the appeal on Article 8 ECHR grounds. Mrs Pettersen, for the respondent, told me that the respondent accepted that the claimed father of the child (VY) is a British citizen. I told Mrs Pettersen that it would be helpful if her colleagues would take a view on the paternity of the child in advance of the next First-tier Tribunal hearing; if paternity is challenged, it may be necessary for the appellant to obtain the necessary DNA tests. I do not expect the respondent to attend the First-tier Tribunal hearing without having first agreed or clearly raised as an issue the question of the child’s paternity.

Notice of Decision

4. The decision of the First-tier Tribunal which was promulgated on 28 October 2015 is set aside. Findings of fact are preserved. I remade the decision to the extent that the appeal is dismissed on asylum and Article 2/3 ECHR grounds. The appellant is not entitled to a grant of humanitarian protection. The appeal is returned to the First-tier Tribunal (Judge Turnock) so that that Tribunal may remake the decision on Article 8 ECHR grounds.

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 her or any member of her 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.

Signed

Date 24 March 2016

Upper Tribunal Judge Clive Lane