



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

IA/26562/2014  
IA/46565/2014

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Newport  
On 17 December 2015**

**Decision & Reasons  
Promulgated  
On 10 March 2016**

**Before  
Mr C. M. G. Ockelton , Vice President  
Deputy Upper Tribunal Judge Davidge**

**Between**

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

Appellant

**and**

RIK  
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Respondents

**ANONYMITY**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) we make an Anonymity Order. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.**

**Representation**

Appellant: Mr I Richards, Senior Home Office Presenting Officer  
Respondent: Mr O Manley, of Counsel, instructed by Rees Wood Terry Solicitors

## **DECISION AND REASONS**

### **Introduction**

1. The Secretary of State for the Home Department is the Appellant. The Respondents (“Claimants” hereinafter), are a wife and husband, and their children are dependents in their appeal.
2. The Claimants are all Nigerians. The wife entered the UK with leave as a student in October 2010; she was joined by her dependent husband in 2011. They have two children born here. The first was born on 10 January 2013 and the second on 1 January 2015. By way of extension to the student leave, and then by a grant of post-study work leave, the wife had leave to remain until 10 August 2014. Since his arrival, the husband has had leave in line with his wife’s. The couple intended to return to Nigeria at the end of the post-study work period in August 2014. The wife had obtained her qualifications including a law degree, and had succeeded in obtaining a job in Nigeria working for a Nigerian human rights NGO. They received medical advice not to go because of the ill health of their older son who suffers from the worst case of sickle cell anaemia that the specialist consultant here had seen. The older son applied for leave to remain on health grounds. At the same time an application was made by the parents for leave to remain in line with the older son, and with the younger son as dependent on their claim.
3. The Secretary of State, on 4 November 2014, refused the older son’s application, and, because he had not obtained leave to remain following his birth in the UK, he was not afforded a right of appeal. There has been no challenge to that position. On 5 November 2014 the Secretary of State refused the parents’ applications, which, having been made before the expiry of their leave attracted a right of appeal. It is in that context that the parties agreed that the appeal turned on the dispute about the older son’s Article 3 health claim, resulting in the rather unsatisfactory position of these Appellants being dependent on a claim of a child who is not himself an Appellant in the proceedings.
4. The Appellants’ ensuing appeal to the First-tier Tribunal (the “FtT”) succeeded. The appeal was allowed on both Article 3 and 8 ECHR grounds.

### **This Appeal**

#### **Article 3**

5. The grant of permission to appeal to this Tribunal recognises arguability in the Secretary of State’s grounds of appeal, which can be summarised as applying too low a threshold to the Article 3 test: departing from the “death bed principle” when finding that the exceptional threshold was

met, and giving undue weight to the fact of the minority of the child. In so doing, it is asserted that the First-tier Tribunal Judge (the “FtTJ”) unlawfully extended the Article 3 paradigm.

6. At the hearing before us Mr Richards argued that the FtTJ had reached a conclusion which was not open to her. The fact that care available in Nigeria was not optimal, and the relevant dependent was a child of 2 years old, was an inadequate basis for finding that the high threshold was met.
7. We deal with this briefly because a detailed reading of the long and carefully reasoned decision makes clear that there was sufficient in the evidence before the judge, including the specialist consultant’s evidence, for the judge to conclude without perversity that the threshold set out in D v UK (Application 30240/96) and N v SSHD [2005] 2 AC 296 was met.
8. The judge reached her conclusions on the basis of expert medical evidence from the specialist consultant that the child had the worst and most severe case of sickle cell anaemia that he had ever seen, and that his life could end as soon as two months after return, given the probability of the inability of the medical facilities in Nigeria to provide the treatment necessary, in his particular case, to prevent an inevitable catastrophic event leading, again inevitably, to death. Whilst there is reference to the need for optimal care, it is a mischaracterisation of the evidence to assert that the position on return amounted to little more than suffering health care which was not optimal, a circumstance which plainly is incapable of meeting the threshold. Here, the evidence was of an almost immediate exposure to an inevitable death.
9. Contrary to the grounds this was not an extension of the Article 3 health care paradigm but a case that the judge found came within it. The self direction was correct and the decision is not perverse. Minority was a matter taken into account, necessarily so in our view because that was the fact of it, but it is not “used” to provide an exception or an extension.
10. Mr Richards was unable to persuade us that the conclusion, even if generous, was not open to the judge.
11. The grounds directed to the alternative findings on Article 8 are otiose absent an error in the Article 3 position, and we do not consider them.

## **DECISION**

12. We dismiss the appeal of the Secretary of State and affirm the decision of the FtT.

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E Davidge  
Deputy Upper Tribunal Judge

Dated: 18 December 2015