



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/39440/2014

THE IMMIGRATION ACTS

Heard at Field House
On 17 December 2015

Decision & Reasons Promulgated
On 6 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

MS ABIOLA HELEN PASEDA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mohammad Chaudhry Afzal, am agent instructed by
International Immigration Advisory Services

For the Respondent: Mr D Clarke, a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing her appeal against a decision taken on 16 September 2014 to refuse her application for leave to remain in the UK under Article 8.

Background Facts

2. The claimant is a citizen of Nigeria who was born on 14 February 1982. She has a daughter, Stephanie Omotolani Damilola Paseda who was born in the UK on 2 September 2006. The appellant entered the UK illegally in November 2002. On 8 November 2010 she applied for leave to remain under the Immigration Rules HC395 (as amended) on the basis of private and family life. That application was refused with no right of appeal. On 21 March 2011 she applied for a reconsideration and on 28 May 2014 in response to a one stop notice was made by the appellant's representative which resulted in a fresh decision on 16 September 2014 refusing the application, The reasons for refusal were that the respondent considered that it would be reasonable for both the appellant and her daughter to leave the UK and re-locate to Nigeria.

The Appeal to the First-tier Tribunal

3. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 2 June 2015, Judge Paul dismissed the appellant's appeal. The First-tier Tribunal found that the appellant was a vague and unsatisfactory witness and that her claims in relation to risk on return to Nigeria were not credible. The judge found that it would be perfectly reasonable for the appellant's daughter to re-locate to Nigeria, there was no reason to believe that any interruption to her education would be significant or unduly harsh, Nigerian culture places a high premium on a good education. The judge found that the appellant had not demonstrated that she does not have close family, social or cultural ties with Nigeria.

The Appeal to the Upper Tribunal

4. The appellant sought permission to appeal to the Upper Tribunal. On 15 October 2015 First-tier Tribunal Judge Hollingworth granted the appellant permission to appeal. The grant of permission suggests that an arguable error of law has arisen in respect of the judge's approach to s55. Thus, the appeal came before me.

Summary of the Submissions

5. The grounds of appeal and skeleton argument assert that the First-tier Tribunal judge and the respondent did not follow the case-law and Policy essentially arguing that 7 years is the relevant period for considering that lengthy residence can lead to the development of ties that it would be inappropriate to disrupt. It is asserted that the judge erred by failing to mention s55 of the Borders, Citizenship and Immigration Act 2009 ('s55') let alone fulfilling the duties imposed under it. It is also asserted that the case of Osawenze [2014] EWCA referred to by the judge is not applicable as the children were aged 4 and 1 in that case.
6. Mr Afzal submitted that EX.1 clearly doesn't require a child to be a British Citizen. When a child has lived in the UK for over 7 years he/she attracts rights. The case of Azimi-Moayed and others (decisions affecting children; onward appeals) [2013]

UKUT 197 (IAC) ('Azimi-Moayed') sets out that in the development of personal and social contacts there is a magic line drawn at 7 years when considering the private life of children. He submitted that when a child has lived in the UK for 7 years it must be considered to be in the child's best interests under s55 to remain in the UK. The key test is the length of residence – the intention in the legislation is clear. Section 55 was brushed aside by both the respondent and the First-tier Tribunal judge. The wrong approach was taken by the Secretary of State. There was no consideration of the 2nd of the duties – to have regard to the statutory guidance which describes procedures and training. Paragraphs 1.14, 1.15, 2.6, 2.7, and 2.8 apply the most. In IO and Others (section 55 duty) Nigeria [2014] UKUT 00517 (IAC) it was held that it is necessary for the reviewing court to take cognizance of the guidance.

7. In relation to Stephanie Mr Afzal submitted that she is attending school, is well integrated. There are no health issues.
8. Mr Clarke submitted that there was no material error of law in the First-tier Tribunal decision. Regarding Azimi-Moayed he referred me to the headnote at point iv) – the first 4 years of a child's life are focussed on the parents. The period accrued by Stephanie is not 7 years it is the number of years from the age of 4. The material time accrues is 5 years. In MK and JO the failure to make reference to the guidance is not an error as long as the duty is complied with. The appellant has not referred to anything in the guidance that the Secretary of State has not complied with. He submitted that it is absolutely clear at paragraph 51 that the judge considered s55. He followed EV (Philippines) and Others v SSHD [2014] EWCA Civ 874 finding that it is perfectly reasonable that the child could re-locate. At paragraph 18 he considered the evidence and at paragraph 21 the judge looked at the educational position. At paragraph 19 the judge considered risk on relocation finding the appellant's account was not credible. The judge applied a reasonableness test and applied Azimi-Moayed. As set out in the case of Dube (ss.117A – 117D) [2015] UKUT 90 (IAC) there is no need to refer to s117 as long as the factors are taken into account. At paragraph 24 the judge considered AM Malawi finding that it does not tip the balance. It is difficult to see how the judge can be said not to have dealt with s117. Paragraph 15 is a reiteration of the respondent's submissions it is not the judge's own reasoning in relation to the case of Osawenze.
9. In reply Mr Afzal submitted that the requirement is for a period of 7 year's residence. That cannot be split between periods when the child is under and over 4 years of age.

Legislative Provisions

Nationality and Immigration Act 2002 ('NIA Act')

10. As from 28 July 2014 statutory provisions in a new Part 5A of the 2002 Act (inserted by s.19 of the Immigration Act 2014) requires, in legislative form for the first time, the Tribunal to take certain factors into account when determining

whether a decision made under the Immigration Acts breaches respect for private and family life. The decision in the instant case is a decision made under the Immigration Acts. The relevant provisions provide:

11. Section 117A sets out the scope of the new Part 5A headed "Article 8 of the ECHR; Public Interest Considerations" as follows:

'117A Application of this Part

- (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –
 - (a) breaches a person's right to respect for private and family life under Article 8, and
 - (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
- (2) In considering the public interest question, the court or tribunal must (in particular) have regard –
 - (a) in all cases, to the considerations listed in section 117B, and
 - (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
- (3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).'

12. The considerations listed in s.117B are applicable to all cases and are:

'117B Article 8: public interest considerations applicable in all cases

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (4) Little weight should be given to –

- (a) a private life, or
- (b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
- (b) it would not be reasonable to expect the child to leave the United Kingdom.'

13. Section 117D provides the definition of a number of terms used in Part 5A. A "qualifying child" means a person under the age of 18 who is either a British citizen or who has lived in the UK for a continuous period of seven years or more.

14. The requirement in s.117A to "have regard" to the considerations in s.117B means a court or Tribunal must have regard to those considerations in substance even if no explicit reference is made to the statutory provisions (see Dube (ss.117A - 117D) [2015] UKUT 90 (IAC)).

15. As a consequence, the court or Tribunal is required to give the new Rules (at [47]): "*greater weight than as merely a starting point for the consideration of the proportionality of an interference with Article 8 rights*" (see also SSHD v SS (Congo) and Others [2015] EWCA Civ 387).

16. Article 8 of the ECHR states:

'(i) Everyone has the right to respect for his private and family life, his home and his correspondence.

(ii) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

17. Relevant Immigration Rules

EX.1. This paragraph applies if

- (a)
 - (i) the applicant has a genuine and subsisting parental relationship with a child who-

- (aa) is under the age of 18 years;
- (bb) is in the UK;
- (cc) is a British Citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application; and

(ii) it would not be reasonable to expect the child to leave the UK; or

(b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK."

Paragraph 276ADE (in force from 9 July 2012 to 27 July 2014)

The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

- (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and
- (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
- ...
- (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would be not be reasonable to expect the applicant to leave the UK...

Discussion

18. There is no challenge to the findings of the First-tier Tribunal judge in respect of the appellant. The only challenge is in respect of the findings in relation to her daughter Stephanie.
19. Whilst a judge does not need to refer to section 55 there does need to be a consideration of the child's best interests. Although the respondent's reasons for refusal letter engages with the Secretary of State's duty under s55 the judge appears to have referred only in passing to the consideration given to Stephanie's best interests by the Secretary of State. For example at paragraph 12 the judge states:

"The reasons for refusal letter also referred to the fact that it was claimed that the daughter had special needs. However that fell away in light of the evidence given. Essentially it was considered reasonable for Stephanie to leave the UK with her mother, to start a new life in Nigeria."
20. At paragraph 21 the judge states:

“... whilst I clearly accept that her child has spent her whole life here, it seems to me - following the principles set out in the case of EV Philippines - it would be perfectly reasonable, in an overall assessment, to conclude that the child could perfectly reasonably relocate to Nigeria. As already indicated above, I am satisfied that she has family connections there and it is also plain that she has been able to successfully move from one school to another. As was pointed out in the Upper Tribunal case of AM at paragraph 39, there was no reason to believe that any interruption to her education by reason of being returned to Nigeria would be significant or unduly harsh. Nigerian culture places a high premium on a good education and I am quite satisfied that there are the means available to ensure that that will continue there.”

21. Whilst it cannot be said that the First-tier Tribunal judge has failed to engage with Stephanie’s interests the focus is on the effect of removal rather than a consideration of the relevant factors and an identification of her best interests. It is not clear that the judge would inevitably arrived at the same conclusion if a proper consideration of Stephanie’s best interests had been carried out.
22. I find that there was a material error of law in the judge’s approach to the duty under s55 to consider as a primary consideration the best interests of Stephanie.
23. I set aside that decision insofar as it relates to the appellant’s daughter pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (‘TCEA’). The finding of the First-tier Tribunal judge in relation to the appellant are maintained.

Remaking the Decision

24. A small bundle of further documents was served prior to the hearing. They consist of a further witness statement made by the appellant dated 28 November 2014, various letters from friends in support of the appellant and various reports from Stephanie’s school and merit awards. I have taken these into consideration when making my decision.
25. As there is no appeal against the judge’s decision in respect of the private and family life of the appellant this appeal focuses on the Article 8 rights of her daughter Stephanie.

Article 8 private life under the Immigration Rules

26. The respondent considered Stephanie’s Article 8 rights under the Immigration Rules specifically Paragraph 276ADE. The Secretary of State considered whether or not it would be reasonable to expect Stephanie to leave the UK. Mr Afzal submitted that when a child has lived in the UK for 7 years it must be considered to be in the child’s best interests under s55 to remain in the UK. I do not accept that submission. Even where a child is a British citizen the child’s best interests must be considered based on all the evidence.
27. The second limb of Paragraph 276ADE (iv) is essentially a proportionality exercise. The question asked is whether it would be reasonable for Stephanie to

leave the UK. This question must be answered in the context of what her best interests are ascertained to be. In ZH (Tanzania) v SSHD [2011] UKSC 4 the Supreme Court noted that s 55 of the Borders, Citizenship and Immigration Act 2009 was enacted to incorporate the UK's obligation under article 3(1) United Nations Convention on the Rights of the Child that, *'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'*

28. The court held:

"26. ... This did not mean (as it would do in other contexts) that identifying their best interests would lead inexorably to a decision in conformity with those interests. Provided that the Tribunal did not treat any other consideration as inherently more significant than the best interests of the children, it could conclude that the strength of the other considerations outweighed them. The important thing, therefore, is to consider those best interests first. ...

...

33. We now have a much greater understanding of the importance of these issues in assessing the overall well-being of the child. In making the proportionality assessment under article 8, the best interests of the child must be a primary consideration. This means that they must be considered first. They can, of course, be outweighed by the cumulative effect of other considerations. In this case, the countervailing considerations were the need to maintain firm and fair immigration control, coupled with the mother's appalling immigration history and the precariousness of her position when family life was created. But, as the Tribunal rightly pointed out, the children were not to be blamed for that. ..."

29. In Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 197(IAC) the Upper Tribunal in considering the case law in relation to decisions affecting children identified the following principles to assist in the determination of appeals where children are affected by the appealed decisions:

"i) As a starting point it is in the best interests of children to be with both their parents and if both parents are being removed from the United Kingdom then the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary.

ii) It is generally in the interests of children to have both stability and continuity of social and educational provision and the benefit of growing up in the cultural norms of the society to which they belong.

iii) Lengthy residence in a country other than the state of origin can lead to development of social cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period.

iv) Apart from the terms of published policies and rules, the Tribunal notes that seven years from age four is likely to be more significant to a child than the first seven years of life. Very young children are focussed on their parents rather than their peers and are adaptable.

v) Short periods of residence, particularly ones without leave or the reasonable expectation of leave to enter or remain, while claims are promptly considered, are unlikely to give rise to private life deserving of respect in the absence of exceptional factors. In any event, protection of the economic well-being of society amply justifies removal in such cases.”

30. In EV (Philippines) and Others v SSHD [2014] EWCA Civ 874 it was held that a decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens.
31. I have considered the factors identified in ZH (Tanzania), Azimi-Moayed and EV Philippines set out above. I accept Mr Afzal’s submission that the requirement is to have lived in the UK for 7 years, not 7 years from the age of four. Stephanie satisfies the requirement in paragraph 276ADE of 7 years residence in the UK. However, it is relevant that 7 years for an older child will tend to be more significant as the older the child is the more likely it will be that there is a development of social, cultural and educational ties. Life for older children will tend to encompass ties that are less focused on life predominately within the family unit. Stephanie is now 9 years old. She has lived in the UK all her life. She has had an opportunity (albeit limited at this age) to develop a social awareness and has built up independent friendships as is demonstrated by the letters in support. Whilst it is generally in the interests of children to have both stability and continuity of social and educational provision she is not at a critical stage in her education as she is still in primary school. She has no right to be educated in the UK as she is not a British Citizen. As set out by the Secretary of State education is freely available in Nigeria. She has gained the benefit of 4 years of education in the UK which will enhance her educational opportunities in Nigeria. Whilst I recognise that a move to Nigeria will require some adaptation to a new home and a new school she will be supported by Mother. She is still at a stage where her primary focus will be on her mother rather than her peers. She is young and adaptable. There are no medical or other difficulties that have been identified. Her mother is Nigerian and still has ties to Nigeria. She has a grandmother and Aunt living in Nigeria. Her mother will be able to assist her integration into life in Nigeria. Stephanie has no connection with the United Kingdom by way of nationality.
32. It is also relevant that the appellant entered the UK unlawfully and has remained unlawfully throughout.
33. This factor cannot be held against the child in assessing her best interests as she had no knowledge of her mother’s immigration status. However, this does not

mean that this factor is irrelevant. In MH (Pakistan) [2011] CSOH 143, at Paragraph 56, the court held:

“The propriety of taking account of immigration history, the precariousness of the position when a relationship was entered into, and the need to maintain immigration control is confirmed by Lady Hale at paragraph 33 in ZH (Tanzania).”

34. At Paragraph 10 of MH Pakistan the court held:

“None of this was a matter of controversy between the parties and I noted that in one of the cases to which I was referred, ZH (Tanzania) v Secretary of State for the Home Department [2011] 2 WLR 148, Baroness Hale of Richmond considered how these factors would apply in an ordinary immigration case where a person was to be removed because he has no right to be or remain in the country. At paragraph 18 she noted that the Convention jurisprudence recognised that the starting point was the right of all states to control the entry and residence of aliens ...”

35. I find that the best interests of Stephanie is to be cared for by her mother. However, to safeguard those interests does not require that she lives in the UK. The level of integration of Stephanie in the UK is not such that it would be disproportionate for her to be removed. It is reasonable, on the facts of this case, to expect Stephanie to leave the UK. Further, there are countervailing factors in this case in respect of the appellant’s unlawful entry and stay in the UK. However, even without that factor, taking into consideration the best interests of Stephanie I am satisfied, on the evidence, that it would be reasonable to expect her to leave the United Kingdom.

36. Mr Afzal made a number of submissions in respect of the Secretary of State’s consideration of the 2nd of the duties under s55, namely, to have regard to the statutory guidance. As submitted by Mr Clarke Mr Afzal did not identify any specific aspect of the guidance that the Secretary of State was said to have failed to comply with. He merely referred to paragraphs of the guidance which he submitted were most relevant. In the absence of any particulars I have not considered this any further.

Article 8 outside the Immigration Rules

37. In Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 640 (IAC) the Upper Tribunal set out the correct approach to appeals involving both Article 8 and the new Immigration Rules. The headnote reads as follows:

“On the current state of the authorities:

...

(b) after applying the requirements of the Rules, only if there may be arguably good grounds for granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them: R (on the application of) Nagre v Secretary of State for the Home Department [2013] EWHC 720 (Admin);

38. There is no 'exceptionality test' or 'threshold' test but there is a requirement to carry out a balancing exercise where an individual cannot meet the requirements of the Immigration Rules. The public interest will generally only be outweighed if an applicant can show that 'compelling circumstances' exist – see [40] to [42] of *SS (Congo)* [2015] EWCA Civ 387.
39. To ensure fairness I have considered the Article 8 claim outside of the Immigration Rules.
40. The correct approach to determining a claim under Article 8 is that set out in *R v SSHD ex parte Razgar* [2004] UKHL 27. A Tribunal should consider 5 questions, namely:
- “(i) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
 - (ii) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
 - (iii) If so, is such interference in accordance with the law?
 - (iv) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
 - (v) If so, is such interference proportionate to the legitimate public end sought to be achieved?”
41. In this case I do not consider it necessary to consider the first 4 questions posed as it is not disputed that there is a private life (the appellant and her daughter would be removed together as a family and there is no claim of any other family life in the UK) and that a decision that would result in Stephanie and her mother being removed from the UK is an interference with their private life, that the consequences in the circumstances of this case are of such gravity to engage Article 8, that the interference is in accordance with the law and is necessary. The core issue is whether the interference in Stephanie's Article 8 rights is proportionate to a legitimate aim.
42. I am mandated by Parliament to give effect to section 117 of the 2002 Act. Section 117A is engaged because I am required to decide whether the impugned decision to refuse leave to remain would breach the right to respect for private and family life under Article 8 enjoyed by the claimant, her husband and their children.
43. Sufficient weight must be accorded to the public interest in the maintenance of effective immigration controls (s117B(1)). In this case the appellant does not meet the requirements for leave to remain in the UK. Additionally she has at all times been in the UK unlawfully. Further, sufficient weight must be accorded to the interests of the economic well-being of the United Kingdom, in that persons who seek to enter or remain in the United Kingdom must be financially independent

(s117B(3)). The appellant has not had recourse to public funds thus far but there is no evidence that she is financially independent. The evidence suggests that she is reliant on financial support from friends. It is not known if that would continue to be available to her. Little weight is to be accorded to a private life formed when the person's Immigration status is precarious (s117B (5)). Although as I set out above the precarious status of Stephanie's stay in the UK cannot be held against her it is not an irrelevant factor when considering the proportionality of the decision to remove the appellant.

44. Section 117B(6) is of a different nature and is directly relevant. In Treebhawon and others (section 117B(6)) [2015] UKUT 00674 (IAC) the Upper Tribunal held, at paragraph 20 that :

'...

Within this discrete regime, the statute proclaims unequivocally that where these three conditions are satisfied the public interest does not require the removal of the parent from the United Kingdom. Ambiguity there is none.'

45. In the headnote in that case the position was set out as

(i) ... In any case where the conditions enshrined in section 117B(6) of the Nationality, Immigration and Asylum Act 2002 are satisfied, the section 117B(6) public interest prevails over the public interests identified in section 117B (1)-(3).

46. In considering section 117B(6) therefore the only real question in this case is whether or not it would not be reasonable for Stephanie to leave the UK. The public interest in immigration control is not relevant. The test is essentially the same as in Paragraph 276ADE.

47. The Court of Appeal stated in VW (Uganda):

"19. ... While it is of course possible that the facts of any one case may disclose an insurmountable obstacle to removal, the inquiry into proportionality is not a search for such an obstacle and does not end with its elimination. It is a balanced judgment of what can reasonably be expected in the light of all the material facts.

...

24. EB (Kosovo) now confirms that the material question in gauging the proportionality of a removal or deportation which will or may break up a family unless the family itself decamps is not whether there is an insuperable obstacle to this happening but whether it is reasonable to expect the family to leave with the appellant. ..."

48. For the reasons I have already set out above I have found that it would be reasonable for Stephanie to leave the UK even in the absence of any of the countervailing factors that I identified.

49. Having weighed all the factors set out above and having found that it is reasonable to expect Stephanie to leave the UK I find that the interference with their Article 8 rights is proportionate to the legitimate public end sought to be

achieved namely, the aim of preserving the economic well-being of the country. The refusal to grant the appellant leave to remain in the UK is proportionate and therefore the appeal is allowed and the Secretary of State's decision stands.

50. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

Decision

51. The decision of the First-tier Tribunal involved the making of an error of law. I set aside that decision.
52. I remake the decision dismissing the appellant's appeal. The decision of the Secretary of State stands.

Signed P M Ramshaw

Date 2 January 2016

Deputy Upper Tribunal Judge Ramshaw