



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

Appeal Number: IA/19909/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 May 2017**

**Decision & Reasons Promulgated  
On 22 May 2017**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**MRS OLUWAYOMI ADELUOLA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Aslam of Counsel instructed by MA Consultants  
(London)

For the Respondent: Mr P Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Buckwell promulgated on 13 October 2016, dismissing her appeal against the decision of the Secretary of State made on 11 May 2015 to refuse her leave to remain in the United Kingdom on human rights basis.
2. There is little dispute about the facts of this case. The appellant entered the United Kingdom in 2003 with entry clearance as a visitor. She appears not to have obtained leave beyond that and has remained in the United

Kingdom since then. It is not in dispute that she is married and that her husband is a British citizen. The husband has seven children in the United Kingdom, two of whom are under the age of 18 and are twins aged 12 whom he supports financially. He is also in employment. The Secretary of State was not satisfied that the requirements of Appendix FM or paragraph 276ADE of the Immigration Rules were met.

3. The judge heard evidence from the appellant and her husband. He also had a number of documents put before him including documents relating to medical condition and it appears payment of maintenance by her husband although this was not in dispute.
4. The judge at paragraph [30] does direct himself properly as to what needs to be taken into account and also that having considered the matter under the Immigration Rules that there is a possible issue of Article 8 over and above that. The judge does not appear at any stage to have considered properly the Immigration Rules specifically paragraphs EX.1 and EX.2 of Appendix FM and the judge also at paragraph 40 concluded that he did not find any particular circumstances in the appeal which would justify consideration of Article 8 directly. The judge dismissed the appeal.
5. The applicant sought permission to appeal on primarily the grounds that the judge had in reaching his decision failed properly to take into account material matters specifically (1) the husband's illness and the impact of his return to Nigeria given the medication; (2) that he had been here for 30 years and (3) the failure to take into account the impact there would be on the appellant's husband's two minor children.
6. I am satisfied and Mr Duffy did not submit to the contrary that there has been a failure to take into account the children in any event. That I consider is material. Further I consider that it is material that the judge appears not properly to have engaged with the position of the appellant's husband's illness or the length of time he has spent in the United Kingdom although the latter is perhaps of less weight. The judge appears also not to have focused his findings through the prism of the Immigration Rules specifically EX.1 and EX.2 and erred in his approach to failing to consider Article 8 over and above the Rules albeit that there might not in this case have been much to say beyond consideration of whether there are insurmountable obstacles. For these reasons I am satisfied that the judge made an error of law which affected the outcome of the decision and I therefore set it aside.
7. Given that there will need to be a further extensive fact-finding exercise specifically with regard to the children and for this to be conducted properly through consideration of the Immigration Rules I am satisfied that given the nature and extent of this exercise that it is necessary to remit the decision to the First-tier Tribunal for a fresh decision on all issues. None of the findings of fact made by the First-tier Tribunal are preserved.

## **SUMMARY OF CONCLUSIONS**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside
2. I remit the decision to the First-tier Tribunal for a fresh decision on all issues; none of the findings of the First-tier Tribunal are preserved.

Signed

Date 15 May 2017

A handwritten signature in black ink, appearing to read 'Jeremy Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul