



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL  
APPEAL NUMBER: HU/05023/2017

THE IMMIGRATION ACTS

Heard at: Field House  
On: 2 May 2018

Decision and Reasons Promulgated  
On: 15 May 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

O F A  
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr S Vokes, counsel (instructed by TRP Solicitors)  
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

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.

1. The appellant is a national of Nigeria, born on [ ] 2016. She appeals with permission against the decision of the First-tier Tribunal Judge who dismissed her appeal against the decision

of the respondent refusing her application for an entry clearance to settle in the UK under paragraph 297 of the Immigration Rules. The First-tier decision was promulgated on 4 August 2017.

2. The Judge found that the appellant's mother did not have sole responsibility at any stage since her departure from Nigeria and her arrival in the UK in 2010. The appeal was also dismissed under Article 8 of the Human Rights Convention.
3. On 23 February 2018 Upper Tribunal Judge Coker granted the appellant permission to appeal on the basis that it was arguable that the Judge appeared on the one hand to have found that Article 8 is not engaged and on the other hand that it was. It was also arguable that he failed to make a finding on whether the aunt is now caring for the appellant and who currently has sole responsibility.
4. In the respondent's Rule 24 response it was accepted that the Judge did not explicitly engage with paragraph 271(i)(f). It was also accepted that the Article 8 assessment outside the Rules was not adequate.
5. At the commencement of the hearing, Mr Kotas accepted that there had been material errors as referred to. He accepted that the decision must be set aside and re-made. The parties agreed that in the circumstances it would be appropriate to remit the appeal to Taylor House for a fresh decision to be made.

#### Assessment

6. I accept for the reasons given that there have been material errors of law. I also find that this is an appropriate case to remit to the First-tier Tribunal as the appellant did not have the benefit of legal representation at the hearing on 1 August 2017. It was only the sponsor who attended that hearing.
7. Having regard to the President's Practice Statement regarding the remitting of an appeal to the First-tier Tribunal for a fresh decision, I am satisfied that the effect of the errors have been to deprive the appellant of having her case properly considered by the First-tier Tribunal.
8. It was agreed at the hearing that the appellant is the daughter of the sponsor. That finding is preserved.

#### Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside.

The appeal is remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made before another Judge.

Anonymity direction is made.

Signed

Date 10 May 2018

Deputy Upper Tribunal Judge Mailer