



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

Appeal Numbers: HU/05784/2016  
HU/05782/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 January 2018**

**Decision & Reasons Promulgated  
On 30 January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

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

Appellant

**and**

**BASIRAT [O]**

**[O S]**

**(~~ANONYMITY DIRECTION NOT MADE~~)**

Respondents

**Representation:**

For the Appellant: Mr S Kotas, Senior Presenting Officer

For the Respondents: Mr A Seelhoff, Solicitor of A. Seelhoff Solicitors

**DECISION AND REASONS**

1. The Appellants, nationals of Nigeria, appeals against a decision of the Secretary of State dated 24 February 2016. In these appeals the Appellant is referred to as the Secretary of State and the Respondents are the Claimants.

2. The Claimants' appeals came before First-tier Tribunal Judge I M Scott (the Judge) whose decision [D], on 24 April 2017 allowed their appeals in the following manner. The appeal of the second Claimant [OS] was allowed with reference to paragraph 276ADE(1)(iv) of the Immigration Rules. The appeal of the first Claimant, her mother, was allowed under Article 8 of the ECHR. The Secretary of State applied and was granted permission to appeal the decisions of the Judge by First-tier Tribunal Judge Cruthers on 31 October 2017. The Claimants made a Rule 24 response dated 15 November 2017.
3. At the hearing of the appeals essentially the argument presented by Mr Kotas was that quite simply the Judge had failed to give an explanation as to why it was not reasonable to expect the second Claimant to leave the UK and live with the first Claimant in Nigeria. It followed that that decision, if it was wrong, necessarily affected the grant of the allowing the appeal of the first Claimant by reference to her continuing to care for the second Claimant.
4. Looking at this decision it is accepted that the Judge correctly stated the law in relation to relevant considerations and D 33, 34, 35 and 36 are a correct statement of the law and in particular of published policy held by the Secretary of State in relation to the IDIs dated August 2015 which deal with whether it would be reasonable to expect a non-British citizen child to leave the UK.
5. I agree with Mr Kotas to a certain extent that some of the Judge's reasoning is perhaps best described as thin, but it seemed to me that even though it might be better expressed, that of itself does not demonstrate that, any other Tribunal correctly instructing itself by reference to the evidence and the positive findings the Judge made, a different decision was likely to be reached. Rather it seemed to me that this is a case where, as is often the way, the Secretary of State challenges appeals allowed on Article 8 ECHR grounds and essentially argues that the threshold now is so high that cases such as these should not succeed. I

agree that in some cases the proper application of the facts and law shows how difficult it maybe.

6. Each case must be looked at on its merits. I take the view that the Judge set out the relevant considerations for the child, the second Appellant, who had been in the United Kingdom since the age of 9, who had been at least more than seven years present, and the considerations that flowed from it. I might not have reached the same decision by any means but that does not demonstrate there was an error of law: It is not for me to substitute my view of the merits. I find that there is no error of law which is material to the outcome. For these reasons, brief as they are, I conclude that the Original Tribunal's decision stands.

## DECISION

The Appeal is dismissed.

7. No anonymity order was made previously and none is now required.

Signed

Date 28 January 2018

Deputy Upper Tribunal Judge Davey