



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/17531/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 13 December 2017**

**Decision & Reasons
Promulgated
On 18 April 2018**

Before

**THE HONOURABLE LADY RAE
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE PERKINS**

Between

**O T A
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah, Counsel, instructed by David Benson
Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

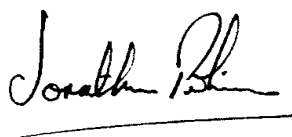
1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. We make this order because the appeal concerns or touches on the welfare of a minor.
2. This is an appeal by a 16-year old citizen of Nigeria against a decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State refusing him leave to enter the United Kingdom on human rights grounds.

3. The short point is that the appellant has been living in Nigeria under the care of his grandmother but now claims that his grandmother is incapable of giving him care. There is evidence to support that claim and including evidence from the school that the appellant attends and the hospital that his grandmother attends. The judge has acknowledged these documents but has made no findings on their veracity or the value of their contents. This, as Mr Tarlow conceded, is a material omission.
4. Additionally, the First-tier Tribunal Judge is criticised because the judge found that the appellant would be cared for adequately by an aunt. The basis of this finding was a throwaway remark in the evidence of the appellant's mother, who for the first time in these proceedings, said that that is an arrangement that could take place.
5. We do not agree with Ms Jegarajah's submission that the law has moved on to the point where there is a positive inquisitorial duty on a Tribunal to investigate every point pertinent to the welfare of a child but we do understand her concern that a judge would make such an important finding, assuming that he did, on such slender evidence.
6. One of the criticisms of this Decision and Reasons is that there is no clear finding about where the best interests of the child lie. It is trite law that by reason of a policy statement section 55 of the Borders, Citizenship and Immigration Act 2002 must be treated as if it applies to out of country applications although on the face of the Act it does not.
7. We are therefore satisfied that the determination is unsatisfactory and we have to consider the remedy. Ms Jegarajah invited us to hear the appellant's mother today but we see two difficulties with that. First, there is no further witness statement from her. We think it would be helpful to have a statement from her explaining why she says what she said about the possibility of the aunt in Nigeria taking care of both the appellant and grandmother and second, it would be helpful to have a statement from the aunt explaining why that is not a good idea, assuming that that is her case. We find that to go ahead without addressing these points would risk an unjust finding that would not be fair to the appellant.
8. We therefore set aside the decision of the First-tier Tribunal and we direct that the decision is made again in the First-tier Tribunal because we do not think it right to go ahead today for the reasons that we have explained. We respectfully invite the First-tier Tribunal to expedite the hearing of this appeal because we have been told that the boy's situation is getting quite serious and needs to be looked at quickly. This is especially important as I have inadvertently delayed promulgating this decision. We do not make any directions but the First-tier Tribunal will know what we have said and we hope that it will agree with us on this point.

Notice of Decision

The First-tier Tribunal erred in law. We set aside its decision and we direct that the case be heard again in the First-tier Tribunal.

Signed



Jonathan Perkins, Upper Tribunal Judge

Dated: 12 April 2018