



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

Appeal Number: PA/04079/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9 January 2018**

**Decision &  
Promulgated**

**On 17 January 2018**

**Reasons**

**Before**

**Deputy Upper Tribunal Judge Pickup**

**Between**

**Secretary of State for the Home Department**

**and**

**[O A]**

**~~[No anonymity direction made]~~**

Appellant

Claimant

**Representation:**

For the Claimant: Mr A Malik, instructed by Kilc

For the Appellant: Mr P Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Samimi promulgated 7.7.17, allowing on human rights grounds the claimant's appeal against the decision of the Secretary of State, dated 19.4.17, to refuse [her] protection claim made on 20.10.16.
2. The Judge heard the appeal on 25.5.17.
3. First-tier Tribunal Judge Brunnen granted permission to appeal on 10.10.17.

4. Thus the matter came before me on 9.1.18 as an appeal in the Upper Tribunal.
5. I note that there is no appeal against that part of the decision of the First-tier Tribunal dismissing the appeal on asylum or humanitarian protection grounds.

*Error of Law*

6. For the reasons summarised below, I found such error of law in the making of the decision of the First-tier Tribunal as to require the decision to be set aside and remade by remitting it to the First-tier Tribunal.
7. The grounds submit that the First-tier Tribunal Judge erred in law by finding that for the purpose of article 8 ECHR the appellant has a family life in the UK, without giving adequate reasons for making such a finding.
8. The judge noted that the appellant does not live with her son, but found that he supports her financially and emotionally. However, she has other family members in the UK, and lives with a friend who provides her with accommodation in a different area to the son, in Croydon. Whilst she sees her son regularly, he has his own family and busy working life separate and independent of his mother, living in East London.
9. At [13] the judge found that the appellant has been an emotional and intrinsic part of her family in the UK and wholly reliant on her son and her friend. However, the judge conflated the issue of what family or social support she might have on return to Nigeria with the issue of identifying the extent of her article 8 qualifying family life in the UK.
10. The judge has not provided any cogent reasoning why the mother was found to be so emotionally reliant or dependent on her son, and did not identify what circumstances beyond the normal blood and emotional ties to be expected between a parent and an independently living adult son with his own family, so as to render removal disproportionate. Similarly, the judge failed to identify what other than normal emotional ties there is about her relationship to her young grandson in the UK. The mere fact of these family relationships and ties is not sufficient alone to engage article 8 ECHR, or if engaged to render interference disproportionate. As held in Kugathas, “neither blood ties nor the concern and affection that ordinarily go with them are, by themselves or together, enough to constitute family life. Most of us have close relations of whom we are extremely fond and whom we visit, or who visit us, from time to time; but none of us would say on those grounds alone that we share family life in any sense capable of coming within the meaning and purpose of article 8.”
11. Whilst I accept that reasons in a decision can be briefly stated, to be adequate they must be at least clear and decipherable to the parties. I also accept that such an assessment is fact-sensitive and may differ with cases to be decided on their own particular facts. However, I find that the First-tier Tribunal failed to provide adequate reasoning and I am not satisfied that the judge applied the correct test at all on the facts of this case. It follows that the decision to allow the appeal on human rights

grounds cannot stand and must be set aside.

*Remittal*

12. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. Where the reasoning for findings on a crucial issue at the heart of an appeal are unclear, the error vitiates all other relevant findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.
13. In all the circumstances, I relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

*Conclusion & Decision*

14. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the attached directions.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

*Consequential Directions*

15. The appeal is remitted to the First-tier Tribunal sitting at Taylor House;
16. The ELH is 3 hours;
17. The findings of the First-tier Tribunal in relation to the appellant's protection claim have not been challenged and shall stand as made. The

- remitted appeal is strictly limited to human rights grounds only.
18. The appeal may be listed before any First-tier Tribunal Judge, with the exception of Judge Samimi;
  19. The appellant is to ensure that all evidence to be relied on is contained within a single consolidated, indexed and paginated bundle of all objective and subjective material, together with any skeleton argument and copies of all case authorities to be relied on. The Tribunal will not accept materials submitted on the day of the forthcoming appeal hearing;
  20. The First-tier Tribunal may give such further or alternative directions as are deemed appropriate.

### *Anonymity*

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. However, I was not asked to make any anonymity direction and on the unchallenged findings can see no reason to do so. Given the circumstances, I make no anonymity order.

### *Fee Award*

*Note: this is not part of the determination.*

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus no fee award can be made.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**