



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

Appeal Numbers: HU/05767/2018
HU/05762/2018

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre

**On 10 January 2019
(delivered *ex tempore*)**

**Decision & Reasons
Promulgated
On 29 January 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**ADEYANJU MOJISOLA LEWIS
TEMITOPE IBIYEMI**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No representative

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellants in this appeal are citizens of Nigeria. They are a married couple who were born respectively on 25 January 1981 and 27 October 1977. They have both been in the United Kingdom for some time and their most recent immigration history and dealings with the government started in 2017 when the first appellant made an asylum claim on 31 January 2017. That claim was refused by the Secretary of State and an appeal was heard by the First-tier Tribunal, Judge Real, on 23 January 2018. She dismissed the appeal.

Subsequently, a further application was made for leave to remain by both appellants based on their human rights. Those applications were refused on 13 February 2018. The appellants then appealed again to the First-tier Tribunal. The appeal on this occasion was heard by Judge Page. Judge Page dismissed the appeals, based exclusively upon Article 8 of the European Convention on Human Rights.

The appellants sought permission to appeal and permission was granted by the First-tier Tribunal, Judge Gibb, on 8 October 2018. The appellants were not legally represented and their grounds were self-prepared. Judge Gibb recognised an arguable error of law in that the appellants have, and had at the time of Judge Page's decision, a daughter who was born on 25 October 2017. Judge Page made no reference to the existence of the appellants' daughter and did not consider her best interests as part of the Article 8 assessment which, as I have already said, he eventually rejected in respect of both appellants.

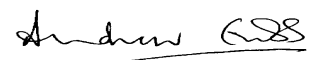
At the hearing, Mr Howells, who represented the Secretary of State, accepted that Judge Page had materially erred in law by failing to have regard to the best interests of the appellants' daughter. The existence of the appellants' daughter was disclosed in the bundle of documents before Judge Page both in the first appellant's statement and also by the birth certificate of the appellants' daughter. I was told by the appellants that their daughter was present at the hearing before Judge Page and therefore her presence was a very real one no doubt at that time.

In his determination, Judge Page, particularly at paragraph 10, concluded that there was nothing new raised in the appeal before him different from that considered by Judge Real in her determination. That was clearly wrong in that, as Mr Howells accepted, the best interests of the appellants' daughter were a legally relevant factor in assessing their Article 8 claims and they were not considered by Judge Page.

I am satisfied that the First-tier Tribunal materially erred in law in dismissing the appellants' appeals under Article 8 and I set aside the decision of Judge Page.

The appeal is remitted to the First-tier Tribunal for a new hearing on all matters before a judge other than Judge Page or Judge Real.

Signed



A Grubb
Judge of the Upper Tribunal

24 January 2019