



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

Appeal Numbers: HU/10887/2017
HU/10890/2017
HU/10929/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 5 February 2019**

**Decision & Reasons Promulgated
On 27 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**M A A G (1)
M D V K K (2)
M P R G (3)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms G Loughran, Counsel instructed by Signature Law
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants nationals of Nigeria appealed against decisions of the Secretary of State dated 9 September 2017 to refuse applications made in November 2016 based on human rights claims to remain in the United Kingdom on the basis of family life.

2. Their appeals against the adverse decisions of the Secretary of State came before First-tier Tribunal Chana (the Judge) who on 8 August 2018 dismissed all appeals with reference to the Immigration Rules and Article 8 ECHR. Anonymity orders were made in respect of the second and third Appellants and those are to be continued. permission to appeal was given by Designated First-tier Tribunal Judge Macdonald on 16 November 2018
3. It is common ground between the parties that it was a decision of counsel who appeared for the Appellants that the first Appellant was not called to give evidence although she wished to do so. It appeared that her counsel took the view that her normal practise was, when the key issues were revolving around the children, that there was no need for the mother or parent of the child to be called to give evidence. It was clear from the note of her counsel that there were issues raised at the hearing upon which the first Appellant might have relevant evidence: There was nothing to indicate that the first Appellant was involved in the decision not to give evidence, as opposed to it simply being a decision of her counsel. It therefore appeared from the statement produced for the purposes of appeal that the first Appellant was aggrieved by the lack of a fair hearing and an opportunity to present her story insofar as it was material to the issues
4. The absence of fairness may constitute a material error of law. On the face of it there appeared to have been a clear error of law in that there was not a fair and proper consideration of the case particularly when exceptionality, insurmountable obstacles and the reasonableness of removal were material issues concerning a child. Whilst that was no fault on the Judge's part I accept that the First Appellant not be allowed to give evidence which raised concerns about her informed consent, opportunity to give instructions and have a fair hearing. Whilst a difficulty may be that she was represented by counsel, rather than in person, I did not think the submission of Mr Wilding excluded the possible error of law. The absence of the first Appellant's live evidence was, even if unspoken, bound to raise

doubts in the Judge's mind as to the real reasons why the first Appellant was not being called and have her evidence tested.

5. In any event the Judge recited a great deal of the case law that tied in with the issue of the child and to a degree Section 117B of the NIAA 2002. However the analysis of particularly MA (Pakistan) [2016] EWCA Civ 705 has been overtaken by the case of KO (Nigeria) 2018 UKSC 11 which gave rise to concern that the judge did not correctly address the relevance of the immigration history of the Appellants.
6. In these circumstances I agree with the parties that the Original Tribunal's decision cannot stand, the matter must be remade in the First-tier Tribunal and no findings of fact should stand.

NOTICE OF DECISION

The appeal is allowed to the extent that the matter is to be remade in the First-tier Tribunal.

DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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.

DIRECTIONS

List for hearing at Taylor House not before First-tier Tribunal Judge Chana.

No interpreter required.

Time estimate two and a half hours.

Any further documentation relied upon in the support of the human rights based claim to be submitted not less than ten working days before the further hearing.

Any further directions to be made on application to the First-tier Tribunal at Taylor House or in the event of a PTR or CMRH at that time.

Signed

Date 18 February 2019

Deputy Upper Tribunal Judge Davey