



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

Appeal Number: IA/36369/2014  
IA/36373/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 February 2016**

**Decision and Reasons  
Promulgated  
On 1 March 2016**

**Before**

**UPPER TRIBUNAL JUDGE JORDAN**

**Between**

**(1) Aishat Sanni  
(2) [A A], a minor**

Appellants

**and**

**The Secretary Of State For The Home Department**

Respondent

**Representation:**

For the appellants: No appearance

For the respondent: Ms A. Fijiwala, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants' legal advisers have wisely accepted that the correct route forward to secure a just result in this case is not to pursue a challenge to the decision of First-tier Tribunal Judge Veloso but to focus on securing British citizenship for [AA] who was born on 14 December 2005.

2. On 2 February 2016, David A. Grand wrote to the Tribunal to say that Ms Sanni had submitted an application for [AA]'s registration as a British citizen and that she was content for the Tribunal to resolve the outstanding appeal in her absence. The result is that neither the appellants nor their representatives were present to pursue their appeal. Further on 10 August 2015 the appellants were directed to file and serve a skeleton argument within 21 days; if additional evidence was to be filed, it should accompany the skeleton argument. This direction has not been complied with. For these reasons, I dismiss the appeal.
3. Although in granting permission to appeal, I pointed out that the First-tier Tribunal Judge failed to engage with the issue of [AA]'s British nationality, I remained open-minded as to whether the error was material. What I had in mind was that, before 1 July 2006 a child could only obtain citizenship through his or her father if the parents were married. The law changed on 1 July 2006 to allow a person to acquire citizenship through his or her father, irrespective of whether the parents were married, subject to proof of paternity. That change was not made retrospective and therefore it did not operate in favour of [AA], born 14 December 2005 until 6 April 2015. The new provisions created a registration route for those born before 1 July 2006 who would have become British citizens had their parents been married.
4. Registration does not operate automatically but only upon application made on the child's behalf and subject to various conditions, including the formal parental consent of the father. No such application was permissible on 23 March 2015, the date of the hearing, but such an application was available when the determination was made (that is, promulgated) on 10 April 2015.
5. I am not satisfied the Judge's error was material since it was open to the appellants (as they have now demonstrated) to apply on [AA]'s behalf for British citizenship either pursuant to s. 65 of the 2014 Act or s.1(4) of the British Nationality Act 1981, the 10 year residence route.
6. When I granted permission to appeal I was concerned with the issue as to whether the First-tier Tribunal was required to consider the imminent entitlement to British citizenship of a non-national child in the context of an Article 8 claim. Clearly, where the Secretary of State retains discretion to grant registration, there could be no relevance to a merely prospective, speculative grant of citizenship. Where, however, the facts established an entitlement to citizenship, the requirements of which were capable of being established before the First-tier Tribunal, an issue arises as to whether that is a relevant factor in an appeal or, if entitlement arises only on application, whether the Tribunal should adjourn hearing the appeal to permit the application to be made.
7. Without hearing argument, I am not satisfied that the First-tier Tribunal Judge erred in dealing with the appeal on the basis of the circumstances

that then existed, at which point no application had then been made on [AA]'s behalf.

8. In the absence of this issue, there was no arguable case that the appellants had a viable claim that their human rights were at risk of violation by reason of the Secretary of State's decision to refuse them further leave to remain and to issue removal directions. They are both Nigerian citizens. [AA] would be returning to Nigeria with her mother. It would not be unreasonable to expect her to do so.

### DECISION

The Judge made no material error and the original determination of the appeal shall stand.

ANDREW JORDAN  
JUDGE OF THE UPPER TRIBUNAL  
19 February 2016