



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/25956/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Liverpool

On 24th April 2017

**Decision &
Promulgated**

On 3rd May 2017

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

F M T

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Unrepresented

For the Respondent: Mr Bates, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Saffer made following a hearing at Bradford on 21st July 2016.
2. She is a citizen of Nigeria who came to the UK in 2002 as a visitor, made four further visits, and finally arrived on 8th October 2006. She overstayed and worked illegally. She then made an asylum claim which was then later withdrawn and, in 2014 applied for leave to remain in the UK on human rights grounds. She was refused and her appeal was dismissed by Judge Saffer.
3. The appellant has a son, E, who was born in 2010. She also cares for her stepson, J, at the weekends and during the holidays. J is her partner's son and is a British citizen.

4. The appellant was unrepresented. Mr Bates, on behalf of the Secretary of State, accepted that the judge had erred in his determination.
5. The judge accepted that the appellant saw J regularly. If the appellant were to be removed to Nigeria with her son E, on the face of it, J's relationship with the appellant and with his half-sibling E would be drastically altered. J is a qualifying child and cannot leave the UK because his mother is British and lives here.
6. The judge ought to have carried out a best interests assessment in relation to J, and, on the basis of that assessment, apply paragraph 117B of the 2002 Act to the proportionality balancing exercise.
7. In Kaur (Children's best interests/public interest interface) [2017] UKUT 00014 the Tribunal held that in the proportionality balancing exercise the best interests of a child must be assessed in isolation from other factors such as parental misconduct. In this case the judge concentrated on parental misconduct but did not assess the best interests of one of the two children in this appeal.
8. Moreover, although the judge considered paragraphs 117B(1) to (5), which count against the appellant, there is no reference in the determination to Section 117B(6) which states:

"In the case of a person who is not liable to deportation, the public interest does not require the person's removal where -

 - (a) the person has a genuine and subsisting parental relationship with a qualifying child; and
 - (b) it would not be reasonable to expect the child to leave the UK."
9. The decision is set aside.
10. Mr Bates said that he would wish to cross-examine the appellant on the extent of the family life which she enjoys with J. Mrs T said that she would be able to obtain evidence from J's natural mother, who would be willing to attend a hearing. Accordingly the appeal has to be adjourned and is remitted to be heard by a judge other than Judge Saffer at Manchester.

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.

Signed

Deborah Taylor

Deputy
Date 2 May 2017

Upper

Tribunal

Judge

Taylor

