



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/47851/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27 July 2018

Decision & Reasons Promulgated  
On 23 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

AYOTUNDE [A]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Muquit, Counsel instructed by Simon Bethel solicitors

For the Respondent: Mr Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Nigeria born on 25 October 1972. She is appealing against a decision of the First-tier Tribunal to dismiss her appeal against the respondent's decision to refuse her application for leave to remain in the UK on the basis of her relationship with her spouse and children. The appellant and her family have been in the UK for more than seven years and the children are qualifying children under Section 117B of the Nationality, Immigration and Asylum Act 2002.

2. Prior to the error of law hearing, the respondent submitted a Rule 24 response stating that the application for permission to appeal was not opposed and inviting the Tribunal to remit the appeal to the First-tier Tribunal for a de novo hearing. Before me, Mr Tarlow, on behalf of the respondent, reiterated that the position of the respondent was that the decision of the First-tier Tribunal should be set aside and heard afresh for the reasons given by Judge Gleeson when granting permission to appeal.
3. Mr Muquit, on behalf of the appellant, submitted that I should proceed to remake the decision and allow the appeal on the basis that the factual matrix was not in dispute and the only reasonable outcome was that the appeal should be allowed given that there are no powerful reasons to rebut the presumption, arising from the length of time the appellant's children have resided in the UK, in favour of finding that removal would be a disproportionate interference with the family's right to a private and family life under Article 8 ECHR. He argued that the recent decision in *MT and ET (child's best interests) Nigeria* [2018] UKUT 88 (IAC) and *MA (Pakistan)* [2016] EWCA Civ 705 supports this view. Mr Tarlow disagreed; arguing that it is not self-evident that the appellant would succeed under Article 8 and that a full rehearing was necessary.
4. I agree with Mr Tarlow. The analysis as to whether removal from the UK would be disproportionate is fact specific. The factual matrix in this appeal is not identical to that in *MT and ET* and, contrary to the view of Mr Muquit, it is not self-evident or "obvious" from the evidence that was before the First-tier Tribunal that removal of the appellant from the UK would constitute a disproportionate interference with her and her family's right to respect for their family and private life.
5. Given the Rule 24 response and the position of the respondent I invited Mr Muquit to make submissions on whether the decision should be remade by me, based on the written evidence that was before the First-tier Tribunal as well as any further evidence he wished to adduce, or whether the matter should be remitted to the First-tier Tribunal to be heard afresh. He expressed a preference for the matter being remitted and Mr Tarlow was in agreement. In my view, this is a matter where it would be appropriate for the appeal to be considered afresh in the First-tier Tribunal given that a full assessment of the evidence including the best interests of the appellant's children will need to be undertaken.

## **Decision**

- (a) The decision of the First-tier Tribunal contains a material error of law and is set aside.
- (b) The appeal is remitted to the First-tier Tribunal to be heard afresh before a different judge.

(c) No anonymity direction is made.

Signed

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line.

Deputy Upper Tribunal Judge Sheridan

Dated: 15 August 2018