



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04949/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reason
Promulgated**

On 9 January 2018

On 25 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCARTHY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JNN

(ANONYMITY ORDER CONTINUED)

Respondent

Representation:

For the Appellant: Ms Aboni, Senior Home Office Presenting Officer
For the Respondent: Mr M Shilliday, instructed by Rashid and Rashid Law

DECISION AND REASONS

1. On 24 October 2017, I granted the appellant Secretary of State permission to appeal against the decision and reasons statement of FtT Judge Samimi, promulgated on 10 August 2017.
2. The appeal process began when the respondent appealed against the decision of 5 May 2016 refusing her protection claim. The respondent appealed on the grounds that the decision was contrary to the refugee convention and unlawful under s.6 of the Human Rights Act 1998.
3. Judge Samimi decided the appellant is not a refugee from Nigeria or otherwise in need of international protection. There is no challenge to that decision. Judge Samimi decided the expulsion of the appellant would be

unlawful under s.6 of the 1998 Act because it was disproportionate under article 8 ECHR. It is that decision the appellant Secretary of State challenges.

4. During the hearing on 9 January 2018, I reminded the parties that although I had granted permission because I believed there was an arguable legal error that did not mean I accepted there was such an error. The test on appeal is significantly different. Neither representative had any objection to me hearing the appeal.
5. The Secretary of State's argument was that Judge Samimi had failed to adequately assess the public interest factors when carrying out the necessary balancing exercise to decide the article 8 issue. Ms Aboni reinforced that view, suggesting that at [33] the judge merely set out the personal factors of the respondent and had no consideration for the public interest. She pointed out that at [34] the judge failed to take into account the facts the respondent is not financially independent, and that her status in the UK has been precarious throughout. According to Ms Aboni, it was unclear how Judge Samimi had reached her decision.
6. Mr Shilladay argued that it was clear to any reader why the Secretary of State had lost. This was an exceptional and compelling case; the judge found the respondent had suffered abuse in Nigeria from her father and this made her particularly vulnerable. The judge found the respondent continued to have family life with her mother and stepfather; clear and unassailable findings had been made on those issues, bearing in mind the guidance in *Ghising*. Mr Shilladay argued this was a case where the Secretary of State understood why she had lost but did not like it.
7. Ms Aboni had nothing to add.
8. Having heard the arguments, I am satisfied there is no legal error in the decision. On close examination it is clear that Judge Samimi had all relevant issues in mind when she carried out the necessary balancing act. This was a case where the personal circumstances were particularly strong, having reached the threshold of compelling. The only justification for expulsion being in the public interest was that the respondent did not meet the requirements of the immigration rules. Ms Aboni could not expand those reasons in the Upper Tribunal hearing, particularly as the burden of proof lay on the Secretary of State to justify the expulsion decision. She could not raise new arguments at this late stage. It is obvious in this case that the compelling nature of the respondent's circumstances would outweigh the need to maintain effective immigration controls.
9. For these reasons, and as I announced at the hearing, I find there is no legal error.

Decision

There is no legal error in the decision and reasons of Judge Samimi and her decision is upheld.

Signed

Date

Judge McCarthy
Deputy Judge of the Upper Tribunal

Order regarding anonymity

I make the following order. I prohibit the parties or any other person from disclosing or publishing any matter likely to lead members of the public to identify the appellant. The appellant can be referred to as "JNN".

Signed

Date

Judge McCarthy
Deputy Judge of the Upper Tribunal