



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01183/2017

THE IMMIGRATION ACTS

Heard at Field House
On 3rd May 2019

Decision & Reasons Promulgated
On 30th May 2019

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

C A O
(ANONYMITY ORDER MADE)

Appellant

and

UNITED KINGDOM VISA SERVICE
SHEFFIELD

Respondent

Representation:

For the Appellant: Ms Jane Heybroek of Counsel, instructed by Universe Solicitors

For the Respondent: Mr Tony Melvin, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the

original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Telford, who on 12 January 2018, dismissed an appeal against the respondent's refusal to grant her and her British citizen daughter visas to join the sponsor, a British citizen of Nigerian origin, here in the United Kingdom. The parties' child was conceived during a visit to the United Kingdom but was born in Nigeria and has never visited or lived here: she is not an appellant in this appeal, although its outcome affects her.
2. During the course of the First-tier Tribunal hearing the appellants' assertion that the requirements of the Immigration Rules HC 395 (as amended) could be met was abandoned and the appeal proceeded solely on the basis of Article 8 outside the Rules in relation to the British citizen child, who is now nearly 3 years old, and still lives with her mother in Nigeria.
3. The sponsor has visited his wife and daughter regularly in Nigeria and he also has two other children by a former relationship who live with their own mother and not with the sponsor. The child was conceived while the appellant was in the United Kingdom on a multiple entry visit visa, returning properly within the currency of that visa.
4. Permission to appeal was granted on the basis that the First-tier Judge had arguably erred in relation to the minimum income requirement, in holding that the British citizen child required entry clearance, which of course she does not, and in failing to consider the child's best interests pursuant to Section 55 of the Borders Act.
5. On 21 December 2018, I set aside the decision of the First-tier Tribunal ordering that it be remade in the Upper Tribunal and noted that evidence in the form of bank statements and company documents had been served, which were said to be evidence that the sponsor could meet the £18,600 income requirement for the appellant to join him here as his spouse. There had not been time for those documents to be analysed or for the respondent to consider them properly.
6. At the hearing today, Ms Heybroek for the appellant accepted that the documents produced in December 2018 were not the required documents for Appendix FM-SE and that the Rules still cannot be met.
7. Ms Heybroek further accepted that the Section 55 obligation on the United Kingdom relates only to children who are within the jurisdiction, but asserted that there is a generic statutory duty in relation British citizen children which she was unable to locate in any particular statute. It is right, of course, that a British citizen child has at all times a personal right of entry to and abode in the United Kingdom.
8. Ms Heybroek argued that the appellant's child cannot reasonably exercise that right, if the appellant is not admitted, since the sponsor still cannot show that he has

income of £18,600 or compensating savings, such that he is entitled to be joined by the appellant, his spouse and the child's mother.

9. The circumstances are unfortunate, but Ms Heybroek has been unable to identify any authority for the proposition that on a bare Article 8 case it is possible to allow an appeal for the purpose of upgrading the family life between the parties rather than simply respecting it.
10. On that basis, and not without sympathy for the position in which this family finds itself, there is no statutory or jurisprudential basis on which this appeal can be allowed and I dismiss it.

Decision

11. For the foregoing reasons, I remake the decision in this appeal by dismissing it.

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

Date: 24 May 2019