



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

Appeal Number: HU/03759/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 17th May 2019**

**Decision & Reasons Promulgated
On 5th June 2019**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**GANIAT [B]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative

For the Respondent: Ms L Kenny, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a Decision and reasons of Judge P-J S White in the First-tier Tribunal. There was a hearing at Taylor House on 14th January this year and in a determination promulgated on 5th February, he dismissed the Appellant's appeal.
2. The Appellant in this case is a Nigerian woman born on 28th December 1990. Although listed are the Appellant and her eldest child as a second Appellant it is clear from a discussion that took place at the First-tier hearing that in fact there was only one Decision and therefore only the

mother who had a live appeal. The judge had before him a human rights appeal. The mother had arrived in the UK at a date which cannot be certain, but we know that she was a minor at the time and she came with her younger brother. She was given leave until 2014, again nobody is quite certain why, but it seems to be to do with her relationship with her younger brother.

3. In her time in the United Kingdom she has given birth to three children, the eldest was born on 2nd March 2010, the next on 16th May 2011 and a son born in May 2015. The eldest child has therefore been in the United Kingdom now for nine years, the middle one for eight and the third for four years. None of them have ever spent any time in Nigeria. In the UK the Appellant has a brother and a sister, both of whom are now British nationals with families of their own. There is a close relationship between them. There is no evidence of any family other than some vague reference to extended family members in Nigeria. The middle child has health issues in that she suffers from epilepsy.
4. In the First-tier Tribunal the judge noted that although there were supporting letters from the brother and sister, they did not give evidence and the judge also noted that although it was not challenged that the middle child had epilepsy, there was no medical evidence before him indicating how serious it was or how frequent the seizures were. The judge found the Appellant could not meet the requirements of either Appendix FM or paragraph 276ADE because he found that there would not be very significant obstacles to her integration in Nigeria because that carried a high threshold. In considering the situation of the children the judge noted that the Appellant's relationship with the children's father had ended and he had no contact with them. He decided their best interests were to remain in the UK, but their main interest was to remain with their mother and he found that it would not be unreasonable for the children to return with their mother, who has no leave in the UK, to Nigeria.
5. Permission to appeal was granted on the basis that it was felt inadequate attention had been paid to the interests of those children and having read the determination I have no hesitation in finding that that complaint is made out and that in the consideration of the children's interests and whether it was reasonable for them to return the judge made an error of law. I therefore set that Decision aside and I redecide it.
6. I am aware of the case of KO (Nigeria) [2018] UKSC 53 indicating that a Decision on what is reasonable in relation to a child being expected to leave the UK, whilst being a child centred question, must be decided in the real world and if the child has a parent with a very poor history and no leave to be in the UK it ordinarily would not be unreasonable to expect that child to return to their home country. I am also aware of the case of MT and ET [2018] UKUT 00088 (IAC), which although it predated KO still contains important guidance. In that case the Appellant mother had an extremely poor immigration history and she had also committed criminal offences. She had one child who had been in the UK for ten years and the

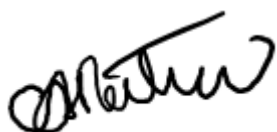
President of the Upper Tribunal found that it would not be reasonable to expect that child to return to Nigeria with her mother.

7. In the present case the mother has been here since she was herself a minor. Therefore, she cannot be criticised for arriving and remaining without leave. She has had leave until 2014, so she has been without leave for a period of five years. In that time her three children had been born and they know nothing whatsoever about Nigeria. The middle child has health difficulties and although we do not know the seriousness of them it is accepted that she has epilepsy. The evidence is that the close family members that the appellant has are in the UK and that they have a relationship. There is no evidence that there are any family members in Nigeria to whom she could turn although there is some reference to some extended family members.
8. Given that the mother has been in the UK now since she herself was a child, has no close family in Nigeria and is the mother of three young children, I find that there are very significant obstacles to her integrating into Nigeria. How would she be able to support and accommodate herself and her three children when she has the responsibility of caring for them? Furthermore, given the situation of these three children, the length of time that they have been here, the relationships they have formed in the home, in the family and outside the family at school and given the middle child's health issues, I find it would not be reasonable to expect them to return to Nigeria.

Notice of Decision

9. Looking at matters in the real world includes looking at all the facts of the case, not simply the fact that mother has no leave and for all those reasons I allow the appeal.

No anonymity direction is made.



Signed

Date 3rd June 2019

Upper Tribunal Judge Martin