



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05025/2019**

THE IMMIGRATION ACTS

**Heard at Glasgow
on 9 January 2020**

**Decision & Reasons Promulgated
On 15 January 2020**

Before

UT JUDGE MACLEMAN

Between

S O

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Peter G Farrell, Solicitor
For the Respondent: Mr M Clark, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge Doyle dismissed the appellant's appeal by a decision promulgated on 7 August 2019.
2. The appellant's grounds of appeal are set out in her application dated 8 October 2019. The essence of the grounds is that the FtT did not take proper account of guidance in the respondent's Immigration Directorate Instructions ("IDI's"), based on case law, on the best interests of children, and when it is reasonable to expect them to leave the UK.

3. Mr Farrell said that the material questions were whether the Judge should have considered the IDI's; whether he did so; and whether failure to do so was material to the outcome. He founded upon *SF (Albania)* [2017] UKUT 120 (referred to in the grant of permission) on the relevance of guidance. He accepted that the decision considered some matters mentioned in the guidance, but he submitted that it omitted others - crucially, the children's lives in the UK up to the time of decision, and how quickly they might adapt, if at all, to life in Nigeria. He said that a further decision was required, taking account of all relevant matters, either by way of a remit to the FtT, or in the UT, and that there had been no material change of circumstances, beyond the passage of time, but that further strengthened the children's ties to the UK.
4. Mr Clark in reply pointed to the extent of the decision in *SF*: *"Even in the absence of a "not in accordance with the law" ground of appeal, the Tribunal ought to take the Secretary of State's guidance into account if it points clearly to a particular outcome in the instant case."*
5. He submitted that the relevant considerations had been taken into account; the guidance did not point to an outcome "clearly in favour" of the appellant, but rather to the contrary; it was no error not to mention factors mentioned in the guidance which had not been specifically founded on by the appellant; and other factors not mentioned, such as the adaptability of the appellant and her husband (who had lived in Italy and Norway) to family removals, tended against the appellant.
6. I reserved my decision.
7. The guidance placed before the FtT says - *"It may be reasonable for a qualifying child to leave the UK with the parent or primary carer where for example: - followed by a series of bullet points, the first of which is - "the parent or parents, or child, are a citizen of that country and so able to enjoy the full rights of being a citizen in that country"*.
8. Judges are not obliged to cite the respondent's guidance. They are of course obliged to apply the law, including the case law, which underpins the guidance. The judge was clearly aware of and took into account the length of residence of the children in the UK. That was a relevant but not a decisive factor. The grounds say that the children had "no real connection" with Nigeria, not having lived there; but they have been brought up by Nigerian parents.
9. The appellant's grounds refer to *KO* [2018] WLR 5273, but that case makes it clear that it is normally reasonable for children to be where the parents are expected to be, which in this case is Nigeria. I am unable to follow the purported distinction that the principle relates to whether the parents' immigration history is taken into account and not to the application of the guidance. Once it is established where the parents are expected to be, that is another important factor which is relevant, although not decisive.

10. The grounds and submissions have not persuaded me that the assessment of reasonability reached by the FtT at [33] involved the making of any error on a point of law.
11. The decision of the First-tier Tribunal shall stand.
12. The FtT made an anonymity direction. The matter was not addressed in the UT. Anonymity is preserved herein.

A handwritten signature in black ink, appearing to read "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

9 January 2020
UT Judge Macleman