



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-001038**  
**First-tier Tribunal No:**  
**HU/50804/2021**  
**IA/04687/2021**

**THE IMMIGRATION ACTS**

**Heard at Field House IAC**  
**On the 25<sup>th</sup> January 2023**

**Decision & Reasons Promulgated**  
**On the 13 February 2023**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL**  
**G A BLACK**

**Between**

**MR WUSU FOUHAD OLUWASEYITAN**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

NO ANONYMITY ORDER MADE

**Representation:**

For the Appellant: Ms T White (Counsel )

For the Respondent: Mr S Whitwell (Home Office Presenting Officer)

**ERROR OF LAW DECISION AND REASONS**

1. This is an error of law hearing. The appellant appeals against the decision of the First tier Tribunal ( Judge Swinnerton) (FtT) promulgated on 19.1.2022 in which the appellant's human rights appeal was dismissed.

### **Background**

2. The appellant is a citizen of Nigeria. At the time of the hearing he was a minor (17 years old). He entered the UK at the age of 13 years with his mother and younger sibling. His father was settled in the UK with three children by his second wife; all the family in the UK were British citizens. Whilst in the UK the appellant completed his school education and now wishes to go to university. He refused to return to Nigeria with his mother, with whom he lives, because he has developed a close relationship with his father.

### **Grounds of appeal**

3. In grounds of appeal the appellant argued that the FtT erred by
  - a) failing to consider section 55 UK Borders Act 2009 (2009 Act) where the best interests of the child lie, and failing to take into account the appellant's relationship with his British citizen half siblings,
  - b) failing to make adequate findings as to family life and the impact of removal on his siblings and his father, and assuming that the appellant would return to Nigeria with his mother,
  - c) failing to consider section 117B Nationality, Immigration & Asylum Act 2002 as amended (2002 Act),
  - d) by wrongly applying paragraph 276ADE (1)(vi) to the appellant who was a minor,
  - e) by failing to conduct a balancing exercise under Article 8.

### **Permission to appeal**

4. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ Scott-Baker on 13.4.2022. In granting permission the FTJ found that the findings were brief, there were omissions as to the legal issues considered in the decision and reasons. The FTJ observed that this was a weak case.

### **ASA and further documentation**

5. For the appellant Ms White relied on a skeleton argument (ASA) and filed an application under Rule 15 seeking to admit further evidence and a Response to the Rule 24 Response. Mr Whitwell helpfully forwarded the Rule 15 application and Response to me and which I have now read.

### **Submissions**

6. At the hearing before me Ms White representing the appellant argued that the FtT had made strong findings of fact as to the existence of family life in the UK but had failed to go on to consider the impact of removal on family members. The FtT had not appreciated that the appellant was a minor and further had applied paragraph 276ADE which was applicable to persons over 18 years. In addition the FtT had not specifically considered section 55 (UKBA 2009) and section 117B 2002 Act as amended.
7. In response Mr Whitwell for the Respondent contended that whilst there were omissions, this was because of a lack of evidence adduced in particular as to the impact of removal on family members. The facts were that the appellant was living with his mother and younger sibling and made visits to see his father and half siblings. The decision was made in the context that the appellant's mother had no lawful leave in the UK. She was intending to apply for leave in the event that the appellant's appeal was allowed. Mr Whitwell, however, acknowledged that the decision ought to be set aside.

### **Discussion and conclusion**

8. This was a human rights appeal in which the appellant was a minor who had come to the UK with his mother and younger brother to visit his father. His father was a British citizen and he had an established family in the UK with his second wife. The FtT found that the appellant had established a close relationship with his father and his half siblings [20-21] but did not then go on to consider the impact on all of the family members of separation from the appellant in the event of his return to Nigeria with his mother and/or the impact on his younger sibling who entered with him in 2017. I accept that there appeared to be little or no evidence on which to base and make any findings as to the impact of removal on the UK family. The FtT made findings as to the appellant's and his mother's circumstances in Nigeria [23-25]. Nevertheless, I am satisfied that it was clearly a matter that necessarily ought to have been considered and findings made, which is a material error in law. In addition the FtT applied paragraph 276ADE (1)(vi) to the appellant which is a further error in law, given that it applies to persons over 18 years of age, which the appellant was not. Further and of more significance I am satisfied that the FtT gave

no specific consideration of where the best interests of the appellant (as a child) lie and thus failed to apply section 55 2009 Act. Of perhaps less significance overall was the FtT's failure to apply section 117B 2002 Act. However, taken cumulatively I conclude that these are significant material omissions and errors such as to render the decision unsound and inadequate and should be set aside for material error of law. Given the errors I cannot be satisfied that the FtT properly considered the material issues and evidence in reaching a decision that there were no exceptional circumstances to justify consideration of Article 8 outside of the Rules.

### **Decision**

9. There is a material error of law in the decision which shall be set aside.
10. In light of the fact that the decision was lacking findings and the FtT failed to apply the correct law, I have decided that the appeal should be remitted to the First-tier Tribunal for a fresh hearing (excluding FTJ Swinnerton). I grant leave to the appellant to adduce further evidence as referred to in the Rule 15 application.

Signed  
GA Black  
Deputy Judge of the Upper Tribunal

Date 30.1.2023

NO ANONYMITY ORDER  
NO FEE AWARD

Signed  
GA Black  
Deputy Judge of the Upper Tribunal

Date 30.1.2023