



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

Appeal Number: IA/50919/2013

THE IMMIGRATION ACTS

Heard at North Shields

On 4 April 2014

Determination

Promulgated

On 16 May 2014

Before

Upper Tribunal Judge Chalkley

Between

**IO
(ANONYMITY DECISION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Soltani a solicitor employed by Iris Law LLP
For the Respondent: Miss Rackstraw, a Home Office Presenting Officer

DETERMINATION AND REASONS

1. The First-tier Tribunal made a direction concerning anonymity under Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I see no reason to vary that direction.

2. The appellant is a national of Nigeria who was born on 1st April, 1978. She made application to the respondent for a student visa and was originally issued with a visa on 25th October, 2005 expiring on 31st October, 2008. She then made application for a student visa on 24th October, 2008 and was granted further leave on 11th February, 2009 expiring on 31st October, 2013.
3. On 11th October, 2010 she made a further application to remain as a student and was granted further leave to remain on 7th March, 2011 valid until 1st September, 2011. She subsequently made application as the spouse of a settled person on 8th September, 2011 but this appeal was refused on 16th December, 2011 with no right to appeal. The appellant was then served with a removal notice on 1st June, 2012 the appellant then made an application outside the Rules on compassionate grounds for leave to remain on 20th February, 2013. This was refused by the Secretary of State on 30th April that year. On 1st July, 2013 she made application for a Derivative Residence card which was refused because the application was either void or an inappropriate application as no fee was paid. She made a subsequent application for a Derivative Residence card on 22nd July, 2013 it was refused by the respondent in a decision which is undated and which appears to have been sent to the appellant's solicitors on 4th September, 2013.
4. The appellant appealed that decision and her appeal was heard by First-tier Tribunal Judge Duff on 29th January, 2014 at North Shields. He recorded at paragraph 5 of the determination and at the hearing raised with both representatives the practical scope of the appeal given that Article 8 was not relevant given that no removal directions had been made for the appellant. That appears to have been accepted by the appellant's representative
5. Ms Soltani said that even the appellant did not succeed under the EEA Regulations, in considering the appellant's Article 8 human rights appeal, Section 55 required that the best interest of the appellant child must be considered.
6. The appellant's child is a 15 month old British Citizen. It is necessary for the appellant to work in order to support her child for whom she is the principal carer and she ought to have some form of leave. The judge dismissed the appeal having recorded that the respondent had yet to issue removal directions as a result of which there was no obligation to consider Article 8 issues.
7. Now it is asserted quite properly on behalf of the appellant that under GEN1.9 of the Rules removal directions are not required to be issued before Article 8 within the Immigration rule can be considered. The judge erred by failing to consider the human rights appeal under the Immigration Rules.

8. Before me the Home Office Presenting Officer accepted that the lack of a removal direction would not automatically mean there was no Article 8 appeal.
9. I believe that EX.1 of the Immigration Rules applies in this appeal because the appellant has a genuine and subsisting parental relationship with a child who is under the age of 18 years and is in the United Kingdom and is a United Kingdom citizen and I find that in all the circumstances it would not be reasonable to expect the child to leave the United Kingdom. I indicated as much to the Home Office Presenting Officer who did not seek to persuade me otherwise. I find that First-tier Tribunal Judge Duff erred on a point of law for the reasons I have given above I set aside his decision. I remake this decision and I allow this appeal.

Upper Tribunal Judge Chalkley