



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

Appeal Number: IA/33708/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 October 2017**

**Decision & Reasons Promulgated  
On 3 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LATTER**

**Between**

**L A A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Parsons, of DJ Webb & Co, solicitors.  
For the Respondent: Mr P Deller, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing her appeal against the respondent's decision dated 15 September 2015 refusing her further leave to remain on human rights grounds.

## Background

2. The appellant is a citizen of Nigeria born on [ ] 1981. She first arrived in the UK in September 2004 with entry clearance as a student. She met her partner, also a citizen of Nigeria, in the UK late in 2004 and they now have four children, all born in the UK on 8 August 2005, 31 August 2007, 20 June 2012 and 17 September 2013 respectively. The children are Nigerian citizens and the eldest child is now also a British citizen.
3. The appellant's leave to remain was curtailed to 28 April 2012 following the revocation of the sponsor licence of the college where she had been studying. On 25 September 2012, the appellant made an application on behalf of herself, her partner and children for leave to remain outside the Immigration Rules. The application was refused on 17 June 2013 with no right of appeal. She lodged an application for judicial review which was resolved by a consent order withdrawing the application on the respondent agreeing to reconsider her claim. It was reconsidered but again refused with no right of appeal. There was a further application for judicial review which was again settled on the basis of the application being reconsidered. On 17 September 2015, the respondent refused the application but with an in-country right of appeal, the subject of these proceedings.
4. The respondent was not satisfied that the appellant could meet the requirements of appendix FM under either the partner or the parent route or of para 276 ADE as there were no very significant obstacles to her integration into Nigeria on return.

## The Hearing before the First-tier Tribunal

5. The judge considered the best interests of the children and whether it would be reasonable for them to leave the UK. At [53] he said that on the totality of the evidence before him, he was satisfied that it was reasonable, despite the fact that the eldest child was a British citizen, for her to return to Nigeria with her younger siblings and their parents. The fact that she was a British citizen was clearly not a trump card but merely one factor which required to be weighed in the balance in favour of the appellant.
6. The judge then considered the public interest question and the provisions of s. 117B of the Nationality, Immigration and Asylum Act 2002. He noted that the appellant was now unlawfully present in the UK and that her partner had also been unlawfully present since about 2002 save possibly for the first six months, although there was no documentary evidence to support his assertion that he had entered on the basis of a valid visit visa. He also noted that the appellant and her partner were not financially independent but, on their account, they relied on handouts from a mosque and her partner's uncle. Further the children had been educated at public expense when there had been no legitimate entitlement to such expense

save that the eldest child would have been so entitled since becoming a British citizen.

7. In summary, the judge was not satisfied that the appellant could meet the requirements of the Rules or that there were compelling circumstances to warrant further consideration of the appeal outside the Rules. The appeal was accordingly dismissed.

### The Grounds of Appeal and Submissions

8. In the grounds of appeal, it is argued that the judge erred in law by failing to give proper weight to the fact that the eldest child had become a British citizen and the second child had been living in the UK since her birth in 2007, therefore for more than seven years. These factors were not properly taken into account, so it is argued, when considering the best interests of the children and the analysis of proportionality should have been carried out on the basis that it would be unreasonable to expect the children to leave the UK. It is further argued that the judge failed to take into account the respondent's policy guidance on the approach to be taken when a decision would force a British child to leave the EU.
9. The grounds then argue that the judge was wrong to make adverse credibility findings against the appellant based at least in part on a misunderstanding of the evidence. In [32] the judge had commented adversely on the fact that the appellant's partner was not a dependant in her application and had not given oral evidence. He regarded this as "little more than a misconceived tactical ploy, undoubtedly to attempt to cause delay in a final resolution of the family's status".
10. Ms Parsons adopted these grounds arguing that there had been insufficient consideration of whether it would be reasonable for the children to leave the UK particularly in the light of the approach to assessing children's best interests set out in ZH (Tanzania) [2011] UKSC 4 and to the fact the eldest child was a British citizen and the next child had been living in the UK for over seven years. The judge's assessment of the appellant's credibility had been affected by his misunderstanding of whether her partner was a dependant or whether he had his own outstanding application.
11. Mr Deller indicated that he did not seek to resist the appeal. He was concerned that the British citizenship of the eldest child had been treated with diminished importance and that the judge had been wrong to proceed on the basis that the appellant's partner was not a dependant in the application when he had been named as such in the respondent's decision. In these circumstances, it was his submission that the decision could not be regarded as safe.

### The Error of Law

12. I accept that the concession is rightly made and that the First-tier Tribunal erred in law as set out in the grounds. Both representatives accepted, and I agree, that the errors were such that the decision should be set aside and remitted to the First-tier Tribunal for a full rehearing.

Decision

13. The First-tier Tribunal erred in law and the decision set aside. The decision is remitted to the First-tier Tribunal for reconsideration by way of a full rehearing before a different judge.

Signed: H J E Latter

Dated: 1 November 2017

Upper Tribunal Judge Latter