



IAC-AH-SAR-V2

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

Appeal Numbers: HU/11868/2016  
HU/11871/2016

**THE IMMIGRATION ACTS**

**Heard at Liverpool  
On 10<sup>th</sup> July 2018**

**Decision & Reasons Promulgated  
On 2<sup>nd</sup> August 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MRS J.O. (FIRST APPELLANT)  
MASTER N. (A MINOR) (SECOND APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: In person

For the Respondent: Mr C Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. The first Appellant is a citizen of Nigeria born on 14<sup>th</sup> November 1983. The second is her minor son who is a citizen of Portugal born on 11<sup>th</sup> August 2008. The first Appellant claims to have entered the UK illegally on 30<sup>th</sup> October 2007. Her dependent child was born in the UK on 11<sup>th</sup> August 2008. The Appellant submitted an application for an EEA - residence card - non-EEA national on 3<sup>rd</sup> October 2008

and this was granted on 18<sup>th</sup> December 2009 until 18<sup>th</sup> December 2014. An application for leave to remain in the UK was submitted on 15<sup>th</sup> October 2015 and that was refused by Notice of Refusal of the Secretary of State dated 20<sup>th</sup> April 2016. The second Appellant's nationality is asserted to be Portuguese by reason of the fact that his claimed father is a Portuguese national.

2. The Appellant appealed against the refusal of the Secretary of State seeking to rely upon the EEA Treaties and Regulations in pursuing the second Appellant's appeal and also appealing generally on human rights grounds under Article 8 of ECHR, namely family and private life.
3. The appeal came before Designated Judge of the First-tier Tribunal McClure sitting at Manchester on 4<sup>th</sup> September 2017. In a decision and reasons promulgated on 7<sup>th</sup> November 2017 the Appellants' appeals were dismissed on all grounds. The First-tier Tribunal Judge granted anonymity in the proceedings. No application is made to vary that order and that order remains in place.
4. On 20<sup>th</sup> November 2017 Grounds of Appeal were lodged to the Upper Tribunal. On 12<sup>th</sup> December 2017 Designated First-tier Tribunal Judge Manuell refused permission to appeal. Judge Manuell considered that the grounds in summary sought to re-argue the appeal making a series of assertions that the judge applied the wrong tests. He considered the discursive grounds to be misconceived and difficult to follow and that the very experienced judge had given detailed and secure reasons for the finding reached having examined the evidence meticulously with particular attention to the best interests of the two Appellants.
5. Renewed Grounds of Appeal were lodged on 19<sup>th</sup> January 2018. The renewed grounds were far more extensive than those initially lodged. On 29<sup>th</sup> March 2018 Upper Tribunal Judge Perkins granted permission to appeal. In granting permission Judge Perkins considered that it was arguable that the Designated First-tier Tribunal Judge did not properly deal with the assertion that the second Appellant was exercising an EEA right and because he found it arguable that the judge did not explain properly his implied finding that it was reasonable to expect the child to leave the UK.
6. It is on this basis that the appeal comes before me to determine whether there is a material error of law in the decision of the First-tier Tribunal Judge. The Secretary of State appears by her Home Office Presenting Officer, Mr Bates. The Appellants appear in person. I explained to the first Appellant the process that was being carried out and she indicated that she understood. I further indicated that I would listen to her submissions without interruptions and that I would reserve my decision.

### **Submission/Discussion**

7. Although this was an appeal by the Appellants it was agreed that as the Appellant was acting in person that it would be appropriate for Mr Bates to make his submissions first. He pointed out the Grounds of Appeal, emphasising that the key point turned on the finding of the judge at paragraph 48 that it had been proved that

the second Appellant's father was in the UK at the material time or that he was a qualified person at the material time and that the judge did not find that it had been proved that he was working. He did not find that it had been proved that the second Appellant's claimed father was working in the United Kingdom or at all, or at least at the time that the second Appellant commenced education. This conclusion is challenged at paragraph 7 in the Grounds of Appeal and it had been submitted that the judge had failed to take into account Regulation 21 of the Immigration (European Economic Area) Regulations 2016. Mr Bates contended that the judge had looked fully at all issues and then gone on to look at whether or not the second Appellant had a freestanding case and concluded that in order for that ground to be made out it would be necessary for comprehensive sickness insurance to be in place and that that ground had not been sustained. He refers me to paragraphs 48 to 50 of the decision and submits that the judge had adequately dealt with the issue.

8. So far as the claim pursuant to Article 8 is concerned he submits that this is a proportionality challenge and that the judge had addressed all issues taking me specifically to paragraph 58 and the conclusions that the judge made reaching that decision. He took into account, he submits, the child's education and weighed this against the public interest.
9. So far as the claim pursuant to paragraph 276ADE is concerned and the test of insurmountable obstacles, he reminds me that the right to remain in the UK is a qualified right and that the judge concluded, he submits quite properly, that the second Appellant remain with the first Appellant and that the judge has had full regard of the reasonableness factors as expressed in *MA (Pakistan)*. He submits the only real interference is to private life and reminds me that the biological father is not involved. He notes that reliance is made on the Appellants' behalf of the second Appellant's involvement in his football team but he points out that there is no reason why the second Appellant could not play football in Nigeria. He reminds me that the burden of proof is on the Appellant and at the time of decision the second Appellant had not been living in this country for seven years. He submits there was nothing compelling to say that removal will be disproportionate and that the judge was perfectly entitled to conclude that the Appellant could reasonably integrate into Nigeria and the fact that the second Appellant had never visited would not be a relevant factor. He reminds me that having no ties is not the relevant test. He asked me to dismiss the appeal and to find that there are no material errors of law.
10. The first Appellant spoke briefly in response, indicating that the second Appellant was settled in the UK and that he had found it difficult to adapt in Portugal. She emphasised that he plays football in England and that they enjoy living here. She stated she understood the nature of the proceedings and would await my decision.

## **The Law**

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or

evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### Case Law

13. I am referred to the authority of *MT and ET (child's best interests; ex tempore pilot) Nigeria [2018] UKUT 00088 (IAC)*. This case is authority for the following proposition:
  - “1. *A very young child, who has not started school or who has only recently done so, will have difficulty in establishing that her Article 8 private and family life has a material element, which lies outside her need to live with her parent or parents, wherever that may be. This position, however, changes over time, with the result that an assessment of best interests must adopt a correspondingly wider focus, examining the child's position in the wider world, of which school will usually be an important part.*
  2. *The giving of ex tempore decisions furthers the aim of dealing with immigration and asylum appeals as efficiently as possible. But any formal attempt to identify and manage in advance those cases which may lend themselves to the giving of ex tempore decisions needs careful handling; not least to ensure procedural fairness”.*

### Findings on Error of Law

14. For reasons given hereinafter I find that there is no material error of law in the decision of the First-tier Tribunal Judge. In essence, whilst appreciating the disappointment that must be felt by the first and second Appellant their arguments raise no issues in law and amount to little more than disagreement with the decision of the First-tier Tribunal Judge. Judge McClure has carried out a very thorough analysis of the evidence and the legal position. As Judge Manuell stated when initially refusing permission detailed and secure reasons have been given for the findings reached and the evidence has been meticulously examined, particularly

with regard to the best interests of the two Appellants. Such matters are addressed in detail from paragraph 47 onwards and the judge has made findings thereafter explaining why the second Appellant cannot succeed under the EEA Regulations and thereafter gone on to consider the claim pursuant to Article 8 based on private and family life at paragraphs 55 to 58. Again, the judge has given full and thorough reasons. Submissions made in the Grounds of Appeal just do not stand up to scrutiny and amount to little more than disagreement with the findings of the judge.

15. Whilst I acknowledge that this decision will be disappointing to the first and second Appellants, I am satisfied for all the above reasons that the decision of the First-tier Tribunal Judge discloses no material error of law and consequently the Appellants' appeals are dismissed and the decision of the First-tier Tribunal Judge is maintained.

### **Notice of Decision**

The decision of the First-tier Tribunal Judge discloses no material error of law. The appeals are dismissed and the decision of the First-tier Tribunal Judge is maintained.

The Appellants were granted anonymity by the First-tier Tribunal Judge. No application is made to vary that order and none is made.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

### **TO THE RESPONDENT FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris