**Upper Tribunal**

**(Immigration and Asylum Chamber)** Appeal Number: PA/12185/2018

**THE IMMIGRATION ACT**

| **Heard at Civil Justice Centre Manchester** | **Decision & Reasons Promulgated** |
|---|---|
| **On 18th March 2019** | **On 22nd March 2019** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**Ms Olamide [S]**

**(NO ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mr Maqsud, International Immigration Advisory Services

For the Respondent: Mr Tan, Senior Home Officer Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Hudson promulgated on the 22nd November 2018 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on asylum, humanitarian protection and Articles 2 and 3 and Article 8 of the ECHR.

2. I have considered whether or not it is appropriate to make an anonymity direction. Whilst the proceedings refer to children there is no need to directly identify the children in this decision. Having considered all the circumstances I do not consider it necessary to make an anonymity direction.

3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Adio on 20th December 2018. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.

4. Despite not being part of the appellant's grounds of appeal Mr Maqsud sought to argue that previous findings with regard to asylum and the risk of FGM should be revisited in assessing best interests of the children. As pointed out in paragraphs 14 and 15 of the decision there had been a previous decision in 2015, in which the claims on FGM grounds had been dismissed, effectively with a finding that there was no risk of the children of the appellant being subjected to FGM. Mr Maqsud had accepted that there was no new evidence. The judge was entitled to follow the approach set out in Devaseelan [2002] UKIAT 00702 and find that there was no risk of FGM. In any event the issue had not been raised in the grounds of appeal.

5. The argument otherwise on behalf of the appellant started from the fact that one of the children of the appellant had been in the UK for at least 7 years and there had therefore to be strong reasons justifying the removal of the children. Mr Maqsud was seeking to argue the circumstances were exceptional as the children had settled in school and had developed friends both at school and in the local area.

6. Mr Maqsud also sought to make the point that in 4 months time one of the children will have spent 10 years in the UK and having been born in the UK the child will be entitled to apply for British citizenship. Mr Maqsud sought to rely upon MT & ET (child's best interest; ex tempore pilot) Nigeria [2018] UKUT 88 (IAC) and the case of MA (Pakistan) & ors v SSHD [2016] EWCA Civ 705.

7. The judge has pointed out that the most recent case of KO [2018] UKSC 53. The judge relies upon the judgement and specifically paragraph 46 onwards wherein it is pointed out that whilst the best interests of the children are to be considered as a primary consideration, ultimately the children best interest have to be viewed in the real world including where the parents will be.

8. Having concluded in KO what the best interests of the children were, under article 8 it was still a matter to determine the reasonableness of the children having to accompany the parents who had no right to be in the United Kingdom. There is reference in paragraph 46 to a child born in the UK, who clearly had been here for nearly or over 10 years. The judgment having acknowledge that at paragraph 51 provides the following conclusion: –

> *But in a context where the parents had to leave, the natural expectation would be that the children would go with them, and there was nothing in the evidence reviewed by the judge to suggest that that would be other than reasonable.*

9. Judge Hudson has considered the case law and the approach adopted is consistent with the law as set down in KO. The judge considered not only the circumstances of the appellant but also of her partner, also a Nigerian national. They had had no right to remain at any stage. The judge concluded that it would be reasonable to expect the children to reside with the parents in Nigeria and nothing in the evidence had established that it would be anything other than reasonable for the family to relocate back to Nigeria.

10. In the circumstances the judge was entitled to come to the conclusions that she did. The judge has properly assess the issues in the case and properly applied the guidance given in the case of KO.

11. For the reasons set out there is no arguable error of law in the decision.

**Notice of Decision**

12. I dismiss the appeal on all grounds.

Signed

Deputy Upper Tribunal Judge McClure Date 19th March 2018