

CAO (Respondent) v Secretary of State for the Home Department (Appellant) (Northern Ireland)

Case ID: UKSC 2023/0056

Case summary

Issues

1. When making immigration decisions that affect the safeguarding and welfare of children, what is required to comply with section 55 of the Borders, Citizenship and Immigration Act 2009 and article 8 of the European Convention on Human Rights?
2. Did the Secretary of State or the First Tier Tribunal make an error of law with respect to section 55 or article 8 when considering the Respondent's asylum application?

Facts

CAO sought asylum in the UK accompanied by two children. Her claim stated that she faced domestic violence at the hands of her husband on return to Nigeria and her daughter would be subject to FGM.

The Secretary of State for the Home Department ('SSHD') did not accept her account of domestic abuse or find it plausible that her daughter was at risk of FGM. CAO appealed to the First-Tier Tribunal ('FTT').

The FTT judge accepted that CAO had been subject to domestic abuse but found that she had not established she was subject to abuse after she moved around Nigeria or that her father-in-law could locate her. She did not prove that CAO's husband wanted to subject the daughter to FGM. The FTT upheld the Secretary of State's decision.

The Upper Tribunal ('UT') upheld the decision of the FTT.

The Court of Appeal in Northern Ireland found that the FTT and the UT had failed to remedy the SSHD's failure to take into account the best interests of CAO's children as required by section 55(3) of the Borders, Citizenship and Immigration Act 2009. Consequently, there had also been a breach of the daughter's article 8 rights.

The Court of Appeal set aside the decision of the UT and sent the case back to the FTT to reconsider.

The SSHD appeals to the Supreme Court.

Judgment appealed

[\[2023\] NICA 14](#)

Parties

Appellant(s)

Secretary of State for the Home Department

Respondent(s)

CAO

Appeal

Justices

Lord Lloyd-Jones, Lord Sales, Lord Hamblen, Lady Rose, Dame Siobhan Keegan

Hearing start date

5 June 2024

Hearing finish date

6 June 2024

Watch hearing

5 June 2024 [Morning session](#) [Afternoon session](#)

6 June 2024 [Morning session](#)