



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

Appeal Number: HU/14870/2017

THE IMMIGRATION ACTS

Heard at UT (IAC) Field House

On 27 November 2018

**Decision & Reasons
Promulgated**

On 21 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

**MS UJU AGATHIA MACHAR
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Record (Counsel), Chambers of Celia Record

For the Respondent: Mr I Jarvis, Senior Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Nigeria who made an application to remain in the United Kingdom which was unsuccessful. She exercised her right of appeal and that appeal was heard by First-tier Tribunal Judge Devittie who dismissed the appeal in a decision promulgated on 5th September 2018. The judge found that the best interests of the child were to remain with the primary carer, her mother, and to have regular contact with her father in the UK (paragraph 10). He found that the best interests of the child were to remain in the UK (paragraph 12). He attached significance to the fact that the child was British. He noted that the Appellant was in good

health, that she had spent most of her life in Nigeria and she would not have difficulty in integrating. Her child, a British citizen, would be able to return to the UK when she was of age. The child was at a very young age and would in effect grow up in Nigeria and there would be relatively little disruption to her life. In regard to the public interest it was found that it would be reasonable to expect the child to leave the UK. He therefore went on to dismiss the appeal.

2. Grounds of application were lodged, it being noted that the child was a British citizen and was too young to be separated from her mother. Reference was made to Rule EX.1 of the Immigration Rules and to what was said in **SF and others (Guidance, post-2014 Act) Albania [2017] UKUT 00120 (IAC)**. It was said that there was an impact on the welfare for the British child who would lose her mother if her mother was returned to Nigeria and it would be wrong to make a decision where the child was forced to leave here. Other grounds were put forward on the basis that there no findings of any kind under Article 8 ECHR.
3. Permission to appeal was granted by First-tier Tribunal Boyes in a decision dated 10th October 2018 and thus the matter came before me on the above date.
4. At the outset Mr Jarvis helpfully indicated that while **SF** was of limited assistance since there was a new IDI in February 2018 the decision could not stand because the child was British and the judge appeared to be saying that the child had to be removed with the mother. Further enquiry was required and the decision should be set aside and remitted to the First-tier Tribunal. What the judge had not taken into account of was the impact on the child in leaving the United Kingdom.
5. For the Appellant Ms Record stated that the decision was unsafe and she sought no more than a remittal to the First-tier Tribunal.
6. It is transparently clear, for the reasons set out above, that this decision is not safe and must be set aside in light of existing case law. It would seem reasonable to conclude that further fact-finding is necessary and on that basis, it is a case which should be remitted to the First-tier Tribunal to be heard by a judge other than Judge Devittie.
7. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

Notice of Decision

8. The making of the decision to the First-tier Tribunal did involve the making of an error on a point of law.
9. I set aside the decision.

10. I remit the appeal to the First-tier Tribunal.

11. No anonymity order is required.

Signed *JG Macdonald*
2018

Date 14th December

Deputy Upper Tribunal Judge J G Macdonald