



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

Appeal Number: PA/07057/2018

**THE IMMIGRATION ACTS**

**Heard at RCJ Belfast  
On 9 December 2021**

**Decision & Reasons Promulgated  
On 13 January 2022**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**R G K  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr E Peters, instructed by Wilson Nesbitt solicitors  
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Grimes promulgated on 18 March 2020 dismissing her appeal against a decision of the respondent made on 15 May 2018 to refuse her asylum and human rights claim.
2. The appellant and her husband have been resident in the United Kingdom since 2009; their child was born here in 2011 and has lived here ever since. It is argued that removing the family to Nepal would be in breach of their rights under article 8 of the Human Rights convention; the appellant

no longer argues that her removal to Nepal would be in breach of the Refugee Convention (see FtT decision at [7]).

3. The Secretary of State's case is that removal would not be in breach of article 8.
4. The judge found, having directed herself in line with *KO (Nigeria)* [2018] UKSC 18 that it would be reasonable to expect the child to go to live in Nepal and thus section 117B (6) was not engaged and that removal was proportionate.
5. The appellant sought permission to appeal on the grounds that the judge had erred in her approach to the failure of the respondent to consider or discharge its duty under section 55(3) of the UK Borders, Citizenship and Immigration Act 2009; and, in doing so, had failed to apply *JO and Others (section 55 Duty) Nigeria* [2014] UKUT 00517 and *JG* [2019] NICA 27.
6. Permission to appeal was granted on 29 March 2021 after a decision of the High Court quashing the earlier refusal of permission by the Upper Tribunal.
7. Since permission was granted, the Upper Tribunal has handed down *Arturas (child's best interests: NI appeals)* [2021] UKUT 237 (IAC), a decision of the President and Vice-President. The headnote provides:

*(1) Under the laws of England and Wales and the law of Scotland, a failure by the Secretary of State to comply with her duties under section 55(1) or (3) of the Borders, Citizenship and Immigration Act 2009 is highly unlikely to prevent the Tribunal from reaching a lawful decision in a human rights appeal involving a child: *AJ (India) v Secretary of State for the Home Department* [2011] EWCA Civ 1191; *ZG v Secretary of State for the Home Department* [2021] CSIH 16.*

*(2) Under the law of Northern Ireland, the position is different: *JG v Upper Tribunal Immigration and Asylum Chamber* [2019] NICA 27.*
8. As this appeal was heard in the FtT in Northern Ireland which is where the family live, the First-tier Tribunal should have adopted the approach set out in *JG*.
9. It was common ground between both representatives that the First-tier Tribunal had not done so and had not properly approached the apparent failure to engage with section 55 of the 2009 Act.
10. In the circumstances, I am satisfied that the decision of the First-tier Tribunal did involve the making of an error of law and I set it aside. Given that nearly two years have elapsed since the last fact-finding exercise, and given the nature of the error, I am satisfied that, as both parties agreed, the appropriate course of action is to remit the appeal to the First-tier

Tribunal for a fresh decision to be made. None of the findings of fact are preserved.

11. I raised with Mr Peters the fact that the child in this case is now, having lived here from birth for 10 years, entitled to register as a British Citizen. He explained that has not yet been done as the family cannot afford to pay the fees. If, however, that position changes, it ought to be drawn to the attention of the First-tier Tribunal and the respondent given that it may be a “new matter” for the purposes of section 85 of the 2002 Act.
12. It would in any event be of great assistance to the First-tier Tribunal if the respondent could now produce a supplementary decision letter addressing section 55 of the 2009 Act and serve it well in advance of the next hearing.

### **Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. The appeal is remitted to the First-tier Tribunal for a fresh decision

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

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

Signed

Date 9 December 2021

Jeremy K H Rintoul

Upper Tribunal Judge Rintoul