



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-005705

First-tier Tribunal No: PA/53918/2023  
LP/06313/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

13<sup>th</sup> February 2025

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BUTLER**

**Between**

**D.A.**  
**(ANONYMITY ORDER MADE)**

Respondent

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**Representation:**

For the Appellant: Mr E. Terrell  
For the Respondent: Mr T. Hussain (via CVP)

**Heard at Field House on 5 February 2025**

**DECISION AND REASONS**

1. The Appellant ('A') is a citizen of Nigeria. She is also the mother of a four-year-old British citizen son ('S').

**Factual background**

2. A entered the UK as a student on 23 March 2007. Her leave to remain expired on 21 February 2007. A made several applications for leave to remain thereafter but these were either refused or voided.
3. On 8 February 2019 A claimed asylum. On 20 August 2024 her son, S, was born. He is currently four and a half years old.

4. On 27 May 2022 A's asylum claim was refused. It is not necessary to outline her asylum claim in any detail at this stage as it is not material to the issues before this Tribunal.
5. A appealed against the refusal of her asylum claim to the First-tier Tribunal. Her appeal was heard by First-tier Tribunal Judge Alis ('**the Judge**') on 16 October 2024. In a determination dated 1 November 2024, the Judge dismissed the appeal on refugee and humanitarian protection grounds but allowed it on human rights grounds.
6. The appeal was allowed under s. 117B(6) of the Nationality, Immigration and Asylum Act 2002 on the basis that it would not be reasonable for S to leave the UK with A. The key reasoning leading to this conclusion was as follows:

*"In assessing reasonableness and whether it would be reasonable for the child to leave the country I find the likely temporary nature of the absence from this country may well be said to make it unreasonable for him to leave. The child is settled in school and has only ever known this country and removing the child to allow the Appellant to then make an entry clearance application will disrupt the child's life. Even assuming the child was able to return to his United Kingdom school, once the Appellant's immigration status had been regularised, his education will be likely to have suffered material disruption, in the meantime."*

7. On 6 November 2024 the Respondent appealed against the Judge's decision, raising a single ground of appeal, namely that the Judge had failed to give adequate reasons on this issue and made a material misdirection of law. The Respondent argued that the Judge had treated S's British citizenship as a "*trump card*" and that there was no basis for the Judge's conclusion that S's removal from the UK would be "*temporary*".

### The hearing

8. At the outset of the hearing, I noted that the Respondent had filed some evidence very shortly before the hearing. This contained two letters from S's school, one of which is a "*record of concerns*", noting that S has some challenges with talking and understanding words. It concludes that S "*should be referred to a professional with a view to getting him some support with his Speech and Language*". This evidence was produced after the hearing before the Judge and it is not relevant to the question of error of law. Mr Terrell, for the Secretary of State, had not seen the evidence. It was not necessary to consider this evidence for the purposes of the error of law hearing but, as will be clear from my reasons below, I admit it to the extent that it is relevant to the question of disposal.
9. Mr Terrell made submissions in line with the tightly-framed grounds of appeal. He referred to the Judge's analysis on the reasonableness of R's departure to Nigeria. He noted that the Judge appears to be applying *Chikwamba v SSHD* [2008] UKHL 40, without expressly alluding to it and without there being any clear basis for concluding that A and/ or S would succeed in an entry clearance application under the Rules.
10. Mr Hussain accepted that the determination was a "*bit muddled*" but submitted that it did not contain an error of law. He stated that the Judge had correctly identified the legal principles. He submitted that the Secretary of State's policy was that it was not reasonable for British Citizen children to have to leave the UK but,

when we considered the policy in question, he accepted that this was not what it stated.

### Error of law

11. I accept that the Judge's decision contains an error of law on the grounds articulated by Mr Terrell. The Judge's conclusion was expressly based on the assessment that S's absence from the UK would likely be "*temporary*" and that he would only be leaving in order to make an entry clearance application. I do not consider that this was a conclusion that was open to the Judge on the evidence before him. Neither party has adduced evidence showing that A and / or S would necessarily succeed in an entry clearance application, nor was there material before the Judge which could properly have led to such a conclusion. The Judge did not give any reasons as to why they would be able to satisfy the Immigration Rules. It therefore appears that the Judge proceeded on an incorrect basis.

### Disposal

12. Mr Terrell invited me to retain this matter in the Upper Tribunal while Mr Hussain invited me to allow the matter to be remitted in light of the new issue regarding S's apparent additional needs.

13. It appears that S's school has recently identified that he has additional needs. This is a potentially significant new issue which requires full consideration. While the unappealed findings regarding A's asylum claim will stand, I consider that this matter should most appropriately be remitted to the First-tier Tribunal for a hearing on the up-to-date position under Article 8.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal involved a material error of a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal shall be remitted to the First-tier Tribunal for a fresh hearing on the remaining Article 8 issues, to be reheard by any judge except First-tier Tribunal Judge Alis.

**Miranda Butler**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

5 February 2025