



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

Appeal Number: HU/11000/2017
HU/11002/2017

THE IMMIGRATION ACTS

Heard at Birmingham Justice Centre

On 4 February 2019

**Decision & Reasons
Promulgated
On 1st May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

**OO
and
AO**

(ANONYMITY DIRECTION MADE)

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Rutherford, Counsel, instructed by Rotherham & Co Solicitors
For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

UPON hearing from Ms Rutherford of Counsel for the Appellant and from Mrs Aboni, Senior Home Office Presenting Officer for the Respondent

AND UPON considering: the decision of Judge of the First-tier Tribunal Moran dated 18 January 2018 dismissing the Appellants' appeals against

the decision of the Respondent dated 8 September 2017 refusing their human rights claims; the Appellants' grounds of appeal dated 30 January 2018; the grant of permission to appeal by Judge of the First tier Tribunal Landes dated 13 February 2018; and the Respondent's Rule 24 Response dated 16 March 2018

AND UPON it being agreed between the parties that:

(i) in dismissing the appeal, the judge materially erred in law by failing, when considering the position of OO's son, SB, a British Citizen, to direct himself in law as to effect of the decision in Ruiz Zambrano (European citizenship) [2011] EUECJ C-34/09;

(ii) the effect of OO's removal from the United Kingdom to Nigeria would be that SB would be obliged to leave the European Union, SB having no relationship with his father and there being no other carer for him in the United Kingdom, thus depriving SB with of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen;

(iii) it would therefore not be reasonable to expect SB to leave the United Kingdom;

(iv) OO has a genuine and subsisting parental relationship with SB;

(v) applying s.117B(6) Nationality, Immigration and Asylum Act 2002, the public interest does not require OO's removal from the United Kingdom;

(vi) it would thus amount to a disproportionate interference with OO's rights under Article 8 ECHR to remove her from the United Kingdom;

(vii) where OO is to remain in the United Kingdom, the removal of AO from the United Kingdom would represent a disproportionate interference with the rights of both OO and AO under Article 8 ECHR;

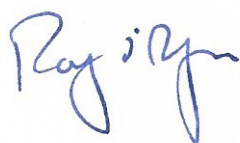
AND UPON the Tribunal being satisfied that it is appropriate to make such an order.

IT IS HEREBY ORDERED, by consent, under Rule 39 Tribunal Procedure (Upper Tribunal) Rules 2008 that:

- (1) The judge's decision is set aside.
- (2) The Appellants' human rights appeals are allowed.

Signed

Date: 24.4.19



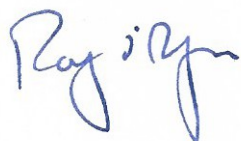
Deputy Upper Tribunal Judge O'Ryan

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

The Appellant AO is a minor child. 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: 24.4.19

A handwritten signature in blue ink, appearing to read 'P. Ryan'.

Deputy Upper Tribunal Judge O’Ryan