



IAC-FH-NL-V1

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

Appeal Number: DA/00877/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 15th August 2014**

**Decision and Reasons
Promulgated
On 24th October 2014**

Before

UPPER TRIBUNAL JUDGE RENTON

Between

DAVID ALBERT OSAGIE-ERESE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Ahluwalia, Counsel instructed by Immigration
Advisory

Services UK

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Nigeria born on 18th January 1967. He claims to have arrived in the UK in August 1987. On 23rd October 2008 he was convicted at Woolwich Crown Court of possession of a false identity

document with intent, fraud, and two counts of making false representations to obtain benefit for which he was sentenced to two years six months' imprisonment. As a consequence, on 3rd September 2009 the Respondent made a deportation order against the Appellant. Earlier the Appellant had unsuccessfully appealed the decision to make that deportation order. Later the Appellant sought revocation of the order which application was refused for the reasons given in a Notice of Decision dated 25th April 2013. The Appellant appealed but that appeal was dismissed by a panel of the First-tier Tribunal for the reasons given in a determination dated 6th March 2014. The Appellant sought leave to appeal that decision, and on 31st March 2014 such permission was granted.

2. At an earlier hearing of this appeal before me on 29th May 2014 I set aside its decision. The appeal comes before me again to re-make that decision.

The Hearing

3. At the hearing I heard oral evidence from the Appellant, the mother of his two children named Catherine Wallis, and two acquaintances named Linward Henly Campbell and Phillipa Josih. The first two of these witnesses were cross-examined. I also heard submissions from Mr Duffy and Mr Ahluwalia. There is recorded in my Record of Proceedings what was said in evidence and by way of submission. I do not need to set that out in detail in this Determination.

The Law

4. Revocation of deportation order cases are to be decided in accordance with the provisions of paragraph 390 and 390A of HC 395 which refer to paragraphs 398, 399, and 399A. However, it has been the Appellant's case throughout these proceedings that his deportation would amount to a disproportionate breach of his right to enjoy a family life with his two children. I will limit myself to that issue. Owing to the date when this appeal was finally heard, that issue must be decided in accordance with the provisions of Sections 117A, 117B, and 117C of the Immigration Act 2014. In particular, it is the Appellant's case that his deportation would be disproportionate because Exception 2 embodied in Section 117C(5) applies. This states inter alia that the Exception applies where the Appellant has a genuine and subsisting parental relationship with a qualifying child and the effect of the Appellant's deportation on the child would be unduly harsh. If that is the case, the public interest does not require the Appellant's deportation.

Decision and Reasons

5. What is not in dispute in this appeal is that the Appellant's two children are British citizens and qualifying children. It was conceded by Mr Duffy at the hearing that it would be unduly harsh for the children to relocate and settle in Nigeria with their father, and therefore I have to decide this case on the basis that if the Appellant is unsuccessful that will result in a long-

term physical separation between him and his children. It is trite law that any decision in respect of the children must be made in the context of their best interests being a primary consideration.

6. The simple facts are that the Appellant has two children, Joshua born on 10th September 1999 and Renee born on 12th April 2002. It is accepted by the Appellant that whatever relationship he enjoyed with those children in the past came to an end completely when he was sent to prison in July 2008. Indeed, the children did not even know that he had been sent to prison. The Appellant did not regain his freedom until he had completed his prison sentence and subsequently granted immigration bail in January 2010. To begin with, thereafter the Appellant had no contact with his children as it was opposed bitterly by their mother. Contact was only resumed as a result of proceedings in the Family Court. There was an interim order made on 24th September 2013, and a final order made on 4th December 2013 whereby the Appellant has contact with the children throughout every alternative week-end; for one day on other week-ends; and throughout alternative weeks during the school holidays. The children's mother, Catherine Wallis, is now supportive of such contact and does not seek to restrict it strictly according to the terms of the court order. She is now more flexible according to the needs of the children as a result of her own substantial health problems as set out in the letter of Dr Gomez dated 7th July 2014. Although she has a partner, it is likely that she will become more and more dependent upon the Appellant for the care of the children as her health deteriorates, particularly her sight.
7. I accept the evidence of the Appellant that since he resumed contact with his children he has been able to re-establish his relationship with them and that they are now close and that the Appellant plays a significant part in the life of his children. For example, he is in contact with their schools as to whatever problems there may be there. Although there was no specific evidence before me of the potential damage to the children in losing contact with their father again, such as a social worker's report, I consider it self evident that it would be disastrous for these children to lose contact with their father again now that it has been re-established, particularly as they are at an important age with regard to their emotional development. For these reasons, I find that the Appellant's deportation would be unduly harsh on his children. I make that decision in the context of the serious nature of the Appellant's offending, which resulted in a sentence of two years and six months' imprisonment, mitigated by the fact that the Appellant has not re-offended during the period of now almost five years since his release.
8. As I have found that Exception 2 applies, I must take the view that the public interest does not require the Appellant's deportation, and that therefore little weight is to be attached to it. In that event, I find that the public interest is outweighed the detrimental effect to his children of his deportation. I therefore find that the Appellant's deportation would amount to a disproportionate breach of the Article 8 rights of him and his children.

9. Paragraph 399 of HC 395 does not apply because the Appellant's mother remains their principal carer. However, having found the Appellant's deportation to be disproportionate, I find that to be an exceptional circumstance outweighing the limited weight to be attached to the public interest for the purposes of paragraph 390A of HC 395. Taking into account the factors listed at paragraph 390 of HC 395, I allow this appeal.

Decision

10. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
11. I set aside the decision.
12. I re-make the decision in the appeal by allowing it.

Anonymity

13. The First-tier Tribunal did not make an anonymity order and I find no reason to do so.

Signed

Date

Upper Tribunal Judge Renton

15th August 2014