IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/03743/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 16 January 2015	**On 6 February 2015**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

FACINET CAMARA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Nicholson, instructed by One Immigration Ltd
For the Respondent: Mr G Harrison, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, who is a citizen of Guinea, born 25 January 1981, appeals with permission the decision of First-tier Tribunal Judge Gurung-Thapa. For reasons given in her determination dated 26 August 2014, the judge dismissed the appeal against the decision to remove the appellant, the respondent having contended that such a course would not breach his human rights. The appellant's claim was based on the private life he had established here since entry as a student on 12 September 2003 and the family life that he had established with a British Citizen, Bijou Traouri and her son MT.

2. The judge accepted that there was family life between the appellant and Ms Traouri and MT in particular the parental relationship with MT who was not expected to leave the United Kingdom, noting that it was in his best interests to remain with his mother in the United Kingdom.

3. The grounds on which permission to appeal was granted were with reference to the assertion that the judge has failed to explain why the appellant should be removed in the light of the findings of fact made with reference to s.117B(6) of the Nationality, Immigration and Asylum Act 2002. This particular provision is in these terms:

> "(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –
>
> (a) That person has a genuine and subsisting parental relationship with a qualifying child, and
>
> (b) It would not be reasonable to expect the child to leave the United Kingdom."

4. Section 117D(1) defines a "qualifying child" as meaning someone under the age of 18 who, *inter alia.,* is a British citizen.

5. Mr Harrison accepted that the Secretary of State had not considered s.55 in the reasons letter dated 8 November 2013 with particular reference to the principles established in *JO and Others (Section 55 duty) Nigeria* [2014] UKUT 00517 (IAC). He invited me to find error of law on this basis and allow the appeal on the grounds of the unlawfulness of the Secretary of State's decision and for the matter to be reconsidered by her. After reflection, Mr Nicholson consented to this course.

6. Accordingly, the decision of the First-tier Tribunal Judge is set aside for error of law. I remake the decision by allowing the appeal against the decision dated 14 November 2013. The application by the appellant will remain pending before the Secretary of State. She will be required to take into account any new matters that the appellant wishes to draw to her attention. In addition she must remake her decision based upon the unchallenged findings of fact by the First-tier Tribunal.

7. The decision of the FtT is set aside. I remake the decision and allow the appeal against the decision to remove the appellant. No anonymity direction is made.

Signed Date 4 February 2015

Upper Tribunal Judge Dawson