



IAC-BH-PMP-V1

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

Appeal Number: IA/35583/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 7 December 2015**

**Decision & Reasons Promulgated
On 21 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**V A N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Ahie of Wisestep

For the Respondent: Mr S Kotas of the Specialist Appeals Team

DECISION AND REASONS

1. 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.

The Appellant

2. The Appellant is a citizen of Nigeria, born on 20 January 1990. The Appellant's immigration history is usefully and fully set out in paragraphs 2-6 of the decision of Judge of the First-tier Tribunal Hodgkinson promulgated on 8 May 2015 dismissing the Appellant's appeal against the decision of the Respondent on 5 April 2013 to curtail his leave as a student so as to expire on 8 July 2013 and his claim that his removal would place the United Kingdom in breach of its obligation to respect his private and family life in the United Kingdom protected by Article 8 of the European Convention.
3. On 16 July 2015 Judge of the First-tier Tribunal R A Cox refused the Appellant permission to appeal stating that:-

“The grounds in essence prove to be simply a disagreement with the Judge's findings thinly disguised as an error of law argument. They are also inaccurate in suggesting he characterised the Appellant as a persistent offender. The main thrust is a suggestion that he did not properly assess the Section 55 best interests of the children involved (with whom the Appellant has contact) but that seems to me unsustainable on a careful and fair reading of the decision as a whole.”
4. The Appellant renewed his application for permission to appeal on similar grounds adding a specific reference to Section 55 of the Borders, Citizenship and Immigration Act 2009 and the need to take account of the best interests of any children and added the following ground:-

“The decisions are grossly unfair and continue to cause the Appellant and his family great protracted distress and anxiety as their case has gone back and forth through the First-tier and Upper Tribunal. This is the second time this case is being brought to the Upper Tribunal. A previous error was also identified by the Upper Tribunal earlier that resulted in the case being remitted back to the First-tier Tribunal for a Re-hearing that unfortunately has yet again become the subject of the instant application.”
5. On 3 September 2015 Upper Tribunal Judge Finch granted permission to appeal on the basis that the Judge -

“... failed to explain what factors indicated that it would be proportionate to remove the Appellant when he had a genuine and subsisting parental relationship with his daughter.”

She also stated he had erred in the manner in which he had applied s.117B(6) Nationality, Immigration and Asylum Act 2002 as amended. He had acknowledged the Appellant's daughter could not realistically relocate to Nigeria but at the same time had found the Appellant's daughter was a qualifying child. He had not gone on to remind himself that in these circumstances the public interest does not require a person's removal.

The Upper Tribunal Hearing

6. The Appellant attended the hearing and stated his daughter was outside the hearing room being looked after by his current partner. I explained to him the purpose of and the procedure to be adopted during the hearing.

Submissions for the Appellant

7. Mr Ahie submitted the Judge had failed to address the position of the Appellant's daughter and that he would not be able to maintain any relationship with her subsequent to removal. At this point I intervened to request that Mr Ahie refer to specific parts of the First-tier Tribunal's decision under appeal. I took the opportunity to point out to him that the grounds for permission to appeal from the First-tier Tribunal's determination promulgated on 21 August 2014 and from the decision promulgated on 8 May 2015 both to the First-tier Tribunal and the latter as renewed to the Upper Tribunal had been in more or less identical form.
8. He continued that Judge Hodgkinson at paragraph 36 of his decision had found the Appellant had contact several times a week with his daughter and that this amounted to parental responsibility, even if the Appellant was not making any financial contribution to her maintenance. I enquired if there was any guidance or jurisprudence about the meaning of "parental relationship". Mr Ahie replied the Appellant had established a family life with his daughter and he relied on that. I indicated the Judge had found that there was family life but the issue remained whether the Respondent's decision would be an interference with that family life sufficient to engage the State's obligations under Article 8 of the European Convention and that he needed to explain with reference to the wording of the Judge's decision where and why the Judge had made a material error of law. If the submission was that the Judge's findings were perverse in the light of the facts, then he needed directly to address that, bearing in mind that it was a serious allegation to make. Mr Ahie retired to take instructions and on return confirmed he had no further submissions to make.

Submissions for the Respondent

9. Mr Kotas submitted the Judge had carefully set out the evidence of the Appellant at para.25 of his decision and had accepted his claimed level of contact. He had gone on to find the Respondent's decision did engage the third question outlined in *R (Razgar) v SSHD [2004] UKHL 27* and at para.30 to consider the best interests of not only the Appellant's daughter but also her half-brother. The Judge had concluded that whilst the Appellant had regular and qualitative contact with both of them he did not live in the same household as the children and was satisfied he did not have any material responsibility for their upbringing or day-to-day welfare. At para.31 the Judge had concluded on the basis of the evidence before him, noting the lack of evidence that the Appellant's removal from the United Kingdom and lack of evidence from any third party such as the

mother of the Appellant's daughter or her or half-brother's school which might show that the removal of the Appellant would have any particularly adverse consequence for the children. There was no suggestion for the Appellant that the Judge had not taken anything into account which he should have done.

10. The Judge at paras.33-35 of his decision had dealt fully with the factors to be taken into account with regard to the public interest laid out in Sections 117A-B of the 2002 Act. At para.35 he had also accepted that the Appellant might arguably have a parental relationship with his daughter and directed himself that the public interest referred to in s.117D of the 2002 Act did not require an individual's removal in the circumstances where that individual has a parental relationship with a qualifying child which his daughter was.
11. Given the evidence before the Judge and the facts found he was entitled to reach the conclusion at para.36 of his decision that the relationship the Appellant had with his daughter and her half-brother did not amount to a "parental relationship".
12. He concluded the Upper Tribunal's grant of permission failed adequately to address the points in issue and that the First-tier Tribunal's decision should be upheld.

Response for the Appellant

13. Mr Ahie confirmed there was no suggestion the Judge had been perverse in his findings and conclusions. At para.35 of his decision the Judge had accepted there was arguably a parental relationship between the Appellant and his daughter and this was inconsistent with his conclusion that their relationship did not in fact amount to a "parental relationship" at para.36 of his decision.
14. The Appellant had legally entered the United Kingdom and had throughout had leave to enter. It would not be in the public interest to remove him and his removal would be disproportionate to the need to maintain immigration control because his stay in the United Kingdom had been entirely lawful.

Findings and Consideration

15. The Judge took into account the Appellant's evidence and indeed the decision contains no adverse finding on the Appellant's credibility. The Judge made findings of fact based on the evidence which he accepted. He took into account the best interests of the Appellant's daughter and her half-brother. He referred to Section 55 of the 2009 Act as well as the judgment in *ZH (Tanzania) v SSHD [2011] UKSC 4*. Tellingly, at para.31 he noted the lack of evidence about the likely impact on the Appellant's daughter and her half-brother in the event the Appellant was removed.

16. There is no inconsistency in the Judge's findings at para.35 of his decision that it is arguable the Appellant has a parental relationship with his daughter and his conclusion at para.36 that on examination the nature of the relationship between the Appellant and his daughter is not such as to qualify as a "parental" relationship for the purposes of s.117D of the 2002 Act or having regard to what was said in *AM (S.117B) Malawi [2015] UKUT 0260 (IAC)* promulgated on 17 April 2015 only some twelve days before the hearing of this appeal in the First-tier Tribunal. Of particular note is what the Upper Tribunal said at paragraphs 14 and 15:-

"14. Whilst we heard extensive argument upon the purpose and effect of s117B(2) and s117B(3), we are satisfied that ultimately the matter is quite straightforward. Upon their proper construction neither s117B(2), nor s117B(3), grants any form of immigration status to an individual who does not otherwise qualify for that status, because they have failed to meet the requirements set out in the Immigration Rules for the grant of that status. If it was the intention of Parliament that the requirements of the Immigration Rules should be over-ridden, merely because an individual could establish that they were able to speak English, or were financially independent, to some degree, then we are satisfied that Parliament would have said so in the clearest terms. In addition we consider that Parliament would have considered it necessary to set out what degree of fluency, or, level of financial independence was required of the individual, and the immigration status that the individual would be entitled to once it had been demonstrated. Plainly these statutory provisions do no such thing. One must continue to look to the Immigration Rules to discern what Parliament considers are the requirements to be met by a claimant, and the length of the period of leave to be granted to them if those requirements are met.

15. What then is their purpose? We are satisfied that s117B(2), and s117B(3), were intended by Parliament to meet, and to finally dispose of, the arguments that have from time to time been advanced to the effect that the language and/or the financial requirements of the Immigration Rules should either be ignored altogether, or, should carry little weight, when the Tribunal is weighing the proportionality of a decision to remove in the context of the consideration of an individual's Article 8 rights; *Bibi [2013] EWCA Civ 322*, and *MM (Lebanon) [2013] EWCA Civ 985*. That view is strengthened by the Human Rights Memorandum that was published by the Respondent as an accompaniment to the 2014 Act [71-73]. In short we are satisfied that s117B(2) and s117B(3) can only properly be read as reinforcing the statement of principle that is set out in s117B(1), as indeed the Appellant accepts both s117(4) and s117(5) should be read."

17. The Judge was entitled to his conclusion that the nature of the Appellant's relationship with his daughter did not amount to a "parental relationship" within the meaning of the Immigration Rules. He summarised the reasons why he reached this conclusion at para.30 and again at para.36. Crucially, the Judge accepting the Appellant's evidence about contact noted at para.30 the Appellant had no material responsibility for the upbringing or

day-to-day welfare of his daughter and her half-brother and at para.36 that he did not provide any maintenance funds for their upkeep.

18. He noted there were no compelling circumstances making the Respondent's decision disproportionate to the need to have regard to the economic well-being of the State which includes the maintenance of immigration control.
19. I conclude that the First-tier Tribunal's determination does not contain a material error of law such that it should be set aside and the decision shall stand.

NOTICE OF DECISION

The decision of the First-tier Tribunal did not contain a material error of law and shall stand. The effect is that the Appellant's appeal is dismissed.

Signed/Official Crest

Date: 14. xii. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal