



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

Appeal Number: HU/03658/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 4 May 2017**

**Decision given in court
On 10 May 2017**

Before

Upper Tribunal Judge John FREEMAN

Between

Ademola Ganiyu OYENIYAN

appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

respondent

Representation:

For the appellant: *Catherine Bexson* (counsel instructed by ADA)

For the respondent: Mr P Nath

DECISION AND REASONS

This is an appeal, against a decision by Judge Jessica Pacey, sitting at Birmingham on 16 November 2016, by a citizen of Nigeria who came to this country on 1 August 2015 on a business visit visa. On 5 August his son [Y] was born to a lady called Bose Babalola, who was a British citizen. She already had four children before him who were not British citizens;

NOTE: (1) *no anonymity direction made at first instance will continue, unless extended by me.*

(2) *persons under 18 are referred to by initials, and must not be further identified.*

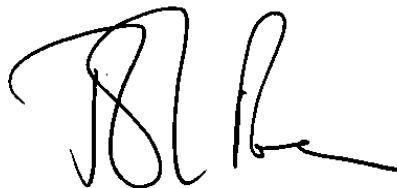
© CROWN COPYRIGHT 2017

but, it was argued, were entitled to be registered as such. On 29 October he applied for leave to remain on the basis of his private and family life with them, and that was refused on 24 January 2016 on the basis that he did not have sole parental responsibility for the children, and there were no very significant obstacles to his pursuing his family life upon return.

2. The appellant explained in the witness statement that he had not returned to Nigeria, as he had planned, because Bose had had problems giving birth to [Y], and, it seemed, she had also gone back to college. There were letters of support from her college and from the school and the GP about the children; but neither the appellant nor Bose Babalola gave evidence. Since they were represented by somebody whose qualifications are unclear, and certainly not by Miss Bexson, it seems that they may well have done that on advice.
3. If so, then it was extremely bad advice, particularly in a case where a family was involved. It is of the very first importance for a judge to be able personally to assess the quality of the family life between the appellant and his children, and there can really be very little criticism of the judge for not doing so in this case. The right thing to do, if a judge becomes aware that this line is going to be taken, is for first to warn the representative; and then, if it is still persisted in, the potential witness personally, that failure to give oral evidence may be held against them.
4. That did not happen here; and the result in the end was that, although the judge gave a painstaking and detailed decision on other aspects of the case, including the considerations about the appellant's precarious immigration status, dictated by section 117B (5) of the Nationality, Immigration and Asylum Act 2002, she did not deal with the important, though not necessarily decisive question at (6). This was whether he had a genuine and subsisting parental relationship with a qualifying child, which [Y] at least was, and potentially the other children; and, if so, whether it would be reasonable to expect the child or children to leave this country. In those circumstances both sides are agreed that there is no alternative to the appeal being allowed, with a direction for a fresh hearing before another first-tier judge.

Appeal allowed

Fresh hearing in First-tier Tribunal, not before Judge Pacey



(a judge of the Upper Tribunal)