



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

Appeal Number: HU/00778/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18<sup>th</sup> February 2020**

**Determination Promulgated  
On 6 March 2020**

**Before**

**THE HON. MRS JUSTICE A FOSTER  
UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**OJ  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G Kiai, of Counsel, instructed by Southwark Law Centre

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Nigeria. He came to the UK in 2005 with a six month visit visa and overstayed. In 2012, 2013 and 2015 he sought to regularise his stay outside of the Immigration Rules. His application was refused on 22<sup>nd</sup> December 2015. His appeal against the decision to refuse his human rights claim was dismissed by First-tier Tribunal Judge

Reid in a determination promulgated on 21<sup>st</sup> March 2017. Permission to appeal was granted by Upper Tribunal Judge Blum on 31<sup>st</sup> October 2017. The appeal was then heard by Deputy Upper Tribunal Judge JM Holmes, and his decision dismissing the appeal and upholding the First-tier Tribunal was promulgated on the 9<sup>th</sup> March 2018. The appellant then applied for permission to appeal to the Court of Appeal, which was granted by the Rt. Hon. Lord Justice Singh on 12<sup>th</sup> April 2019. The matter was remitted to the Upper Tribunal by the Court of Appeal for redetermination. On 12<sup>th</sup> February 2020 Upper Tribunal Judge Lindsley admitted the new bundle of evidence submitted by the appellant dated 23<sup>rd</sup> January 2020.

### *Evidence & Submissions*

2. In summary the appellant asserts that the family situation is as follows. The appellant lives with his wife (Ms O), and her child D, a British citizen born in June 2013 as a result of a short relationship with the appellant's brother, and their two children, K born in March 2012 and C born in May 2015. His wife is a Nigerian citizen as are the children K and C, and they all have limited leave to remain on the basis of her family and private life ties to the UK. The appellant also has a minor child, Q, who lives in Nigeria. The child K is on the autistic spectrum but in mainstream school. The child D has no relationship with her natural father. Ms O has mobility issues and has severe mental health problems. There had previously been a break down in the relationship between the appellant and Ms O, but he moved back into the family home in March 2017 and is the 24 hour carer for all family members doing all the childcare, cooking, cleaning, laundry and shopping.
3. The respondent accepted in his skeleton argument that the only live issue between the parties was whether the appellant has a genuine and subsisting relationship with his children. If the Upper Tribunal finds that this is the case then it is accepted that the appeal should be allowed through the prism of s.117B(6) of the Nationality, Immigration and Asylum 2002 Act as it is accepted that K and D are qualifying children with respect to whom it would be unreasonable to expect them to leave the UK.
4. The appellant submits in his skeleton argument that the requirements of s.117B(6) of the Nationality, Immigration and Asylum Act 2002 are met. It is argued that the appellant has a genuine and subsisting parental relationship with the child D, who is a British citizen and qualifying child, as he treats her equally with his other biological children as part of one family and plays an active part in her upbringing which has progressed with time to mean that he is her main carer due to her mother's ill health and her lack of contact with her father. The South London and Maudsley NHS Foundation Trust wrote in September 2018 that it was essential that the appellant reside with his wife and the three children as they were all vulnerable, and without his being present the physical

wellbeing of the children would deteriorate as they would be at risk of neglect.

5. Before the Upper Tribunal Mr Bramble conceded the appeal and explained that this was because evidence in the bundle admitted for this hearing. At page 18 of the bundle there is a letter from Harris Primary Academy dated 16<sup>th</sup> January 2020 which states that the appellant is the emergency contact for all three children, attends parents' evenings and drops and picks them up from school every day. It also states that the appellant had accompanied K's class swimming one a week for a term. Mr Bramble noted that there was further additional evidence from a friend and social worker which the appellant had applied to admit in addition to this evidence but his view was that this was not needed. He was satisfied that the appellant has shown that he has a genuine and subsisting parental relationship with his children.

### *Conclusions - Remaking*

6. The issue that the Court of Appeal has remitted to the Upper Tribunal to determine is whether it is reasonable to expect the oldest child of the family, who is not the appellant's biological child, but who is a British citizen, to go and live in Nigeria applying the test at s.117B(6) of the Nationality, Immigration and Asylum Act 2002, and the guidance in KO (Nigeria) [2018] UKSC 53 AB (Jamaica) [2019] EWCA Civ 661.
7. It is conceded by the respondent that it would not be reasonable to expect K (or indeed his sister D) to go and live in Nigeria; that the appellant has a genuine and subsisting parental relationship with K and his other children; and that as a result that the appeal should be allowed under Article 8 ECHR.

### Decision:

1. The decision of the First-tier Tribunal involved the making of an error on a point of law.
2. The decision of the First-tier Tribunal is hereby set aside
3. We re-make the decision in the appeal by allowing it on Article 8 ECHR grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious

harm arising to the appellant's children and his partner who are all vulnerable people.

Signed: Fiona Lindsley  
Upper Tribunal Judge Lindsley

Date: 18<sup>th</sup> February 2020