



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

Appeal Number: DA/00465/2013

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**Determination  
Promulgated**

**On 23<sup>rd</sup> September 2013**

**On 24<sup>th</sup> September 2013**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MR C J B O  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss Nwator (Leslie Charles Solicitors)

For the Respondent: Mr G Harrison (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The Appellant is a citizen of Nigeria born on 14<sup>th</sup> July 1987. He appeals to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Stokes and Dr Ravenscroft) promulgated on 31st May 2013 dismissing his appeal against the Secretary of State's decision to deport him.
2. The Appellant applied twice, unsuccessfully, in 2008 for entry clearance to the UK as a student. He then, using a false French passport, came to the

UK at the end of 2008. He thereafter took no action to regularise his position in the UK.

3. In 2009 he met his partner and they shortly thereafter started to live together. He was then at the beginning of 2011, charged with possession with intent to supply Class A drugs and identity documents with intent. While on remand he claimed asylum. On 15th August 2011 he was convicted and sentenced in February 2012 to a term of imprisonment of three years and six months.
4. The Appellant's partner became pregnant shortly before his arrest and gave birth to their daughter in November 2011. On completion of his sentence the Appellant was detained in immigration detention until he was granted bail on 10th January 2013. Since then he has been living with his partner and their daughter. His partner attends university and he cares for their daughter on a full-time basis.
5. Although of Nigerian origin the Appellant's partner's parents are in the UK.
6. The First-tier Tribunal dismissed the appeal under the Immigration Rules and under the ECHR finding deportation proportionate in the circumstances.
7. The grounds upon which permission to appeal was granted and as expanded upon before me can be summarised briefly. It is argued that the First-tier Tribunal did not give appropriate consideration or weight to the best interests of the Appellant's daughter.
8. I do not find the grounds to be made out and do not find that the Tribunal made an error of law.
9. The Tribunal set out the oral evidence before it from the Appellant, his partner and his partner's mother and also referred to various documents and witness statements that it took into account. Its findings of fact and credibility start at paragraph 35 of the determination and at paragraph 36 the Tribunal noted a number of inconsistencies in the evidence which affected the Appellant and his witnesses' credibility. It found at paragraph 38 that, having considered the evidence in the round and the supporting documentary evidence, all the witnesses' credibility was damaged by the inconsistencies it had listed. In particular it found that the couple had not been living together as long as they claimed. It was unimpressed by the Appellant's apparent attempt to minimise his culpability in his crime.
10. The Tribunal did however accept the Appellant's paternity of his daughter and accepted that his partner and the baby had visited him in prison.
11. The Tribunal also noted that the Appellant had entered the UK using false documents having twice had visas refused and had done nothing to

regularise his position once he had arrived. They noted the gravity of his offence and that he was convicted after trial.

12. At paragraph 44 the Tribunal noted that the Appellant's daughter was at the date of hearing 19 months old that she and the Appellant had lived together for only four months. The Tribunal found that whether or not the child had visited the Appellant in prison, at her age she would not have any recollection of him as her father until he moved in with her and her mother. It accepted the relationship is a genuine parental relationship but given that it was of such short acquaintance found that it could not yet be described as subsisting. It noted that the child is a British citizen who has spent her life thus far in the UK. She is at an age where her life revolves around her family and during most of her life she has lived with her mother and her maternal grandmother. Her grandmother has cared for her when her mother was visiting the Appellant in prison and she therefore has strong emotional ties to her grandmother. The Tribunal accepted the evidence that the Appellant partner's family is a close family and did not find it reasonable to expect the child to leave the UK to live in Nigeria with her father.
13. The Tribunal noted the genuine relationship between the Appellant and his partner and that it had existed for some four years but also noted that it had been commenced and conducted at all times when he had no status in the UK, a fact that was known to his partner.
14. The Tribunal referred itself to the article 8 case law as it relates to children and family life and also so far as it relates to deportation. It referred at paragraph 52 to ZH (Tanzania) [2011] UKSC 4 and Omotunde (best interests - Zambrano applied) Jamaica [2011] UKUT 00247 and at paragraph 53 acknowledged that in general a child's best interests are served by it being brought up by both its parents. It found that it was in the child's best interest at her age to remain in the UK with her mother and with her mother's family with whom strong ties have been established since her birth. The Tribunal noted that there was no evidence that the child had suffered emotionally from the Appellant's absence when in prison and given the brevity of her relationship with him noted that whilst deportation would sever his relationship with his daughter there was no evidence that her relationship with him is so established and deep rooted that his absence would adversely affect her well-being.
15. The Tribunal's overall findings are summarised at paragraph 54 and at 54 (ix) it notes that it has considered the primary importance of the child's well-being and the duty to safeguard her welfare and found those to be best served by her remaining in the UK with her mother and maternal family.
16. It cannot be said that the child's best interests have not been taken into account nor can it be said that they have not been taken into account as a primary consideration. The Tribunal weighed up all of the evidence

including the Appellant's immigration history and the gravity of the offence that he committed, the fact that his relationship with his partner was built up at a time when he should not have been in the UK and that the child's best interests did not require his continued presence in the UK. Even if it did the Tribunal found it would nevertheless be proportionate to deport him. I can discern no error of law in the Tribunal's reasoning. The relationship with the child was so brief and his offence so serious that there is no reasonable prospect of any other outcome been achieved.

17. The First-tier Tribunal having made no error of law in its determination, its decision shall stand and the appeal to the Upper Tribunal is dismissed.

Signed

Dated 23<sup>rd</sup> September 2013

**Upper Tribunal Judge Martin**