



Upper Tribunal  
Immigration and Asylum Chamber

Appeal Number: IA/20109/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 17 March 2014

Promulgated on:  
On 18 March 2014

Before

Upper Tribunal Judge Kekić

Between

Sixtus Ifeanyi Odigwe  
(anonymity order not made)

Appellant

and

Secretary of State for the  
Home Department

Respondent

Determination and Reasons

Representation

For the Appellant:

Mr P Warburton, Counsel

For the Respondent:

Ms R Pettersen, Home Office Presenting Officer

**Background**

1. This appeal comes before me following the grant of permission by First-tier Tribunal Judge Cruthers in respect of the determination of First-tier Tribunal Judge Sangha who dismissed the appeal by way of a determination dated 23 December 2013.

2. The appellant is a citizen of Nigeria born on 11 August 1981. He entered the UK as a student in 2011 with leave to enter until 18 November 2012, completed his studies in May 2012 and on 16 November 2012 made an application to remain as the spouse of Sylvie Lokoto whom he married the previous day. They lived separately; he worked in Mansfield and saw his wife at weekends as she lived in Enfield. Sadly, on 3 December 2012, Ms Lokoto passed away. She left a daughter, C, born on 7 March 2000 who had lived with her. On 5 June 2013 the respondent refused the application under the rules and on Article 8 grounds.
3. The appellant lodged an appeal but did not seek an oral hearing. The grounds argue that he now regrets this and that in view of the compassionate nature of the case the judge should have remitted it to the respondent for further evidence to be adduced or adjourned it for an oral hearing. It is also argued that adequate consideration had not been given to the best interests of the child with whom the appellant has a strong bond.

### **Appeal hearing**

4. The grounds were expanded at the hearing when I heard submissions from the parties. The appellant was in attendance. For the appellant, Mr Warburton acknowledged that there was sparse documentary evidence before the judge but he submitted that given the plethora of case law about the best interests of children, the judge should have done something to obtain further evidence. He submitted that the child had lost her mother and would lose out if the appeal is not heard.
5. Ms Pettersen submitted that it was not an error for the judge to fail to take account of documentary evidence that had not been placed before her. The appellant had the option of an oral hearing but did not choose it. He had the option of adducing documentary evidence but did not do so. There was no error of law in the determination and it should not be set aside.
6. In response Mr Warburton submitted that the judge had failed to have regard for ZH (Tanzania) [2011] UKSC 4. Although she had limited papers, the judge should have acted in the way previously suggested. Mr Warburton also relied on Home Office guidance in Article 8 cases where there was a British child involved. He submitted that on that basis the appellant may be entitled to leave. In reply to that, Ms Pettersen submitted that the child was living with her grandparents and the appellant was not her parent or primary carer. Mr Warburton submitted that the facts of MF (Nigeria) were that the British mother of the child was alive and the applicant was a criminal yet allowed to remain. On those facts, this appellant should succeed.

7. At the conclusion of the hearing I reserved my determination which I now give.

### **Findings and Conclusions**

8. I have taken into account the submissions made and the determination of the First-tier Tribunal.
9. This is a case where the appellant realises he failed to present his case properly to the First-tier Tribunal and is trying to rectify his error. In order to do that he seeks to blame the judge for not taking steps to obtain evidence that he should have provided in order to make out his case. It is unfortunately for the appellant, too late for that. Whilst I have sympathy for his situation, this is not the course to follow. The appellant had every opportunity to present his case. He chose not to request an oral hearing when he lodged his appeal. It is said in his defence that he was not legally represented but knowing what was at stake, the appellant should have sought legal advice. No explanation is provided for why he did not do so. Directions were issued by the Tribunal for written evidence and submissions to be submitted to the judge but the appellant submitted nothing. No explanation is offered for this.
10. It is submitted that the judge should have adjourned the appeal to an oral hearing. First, I would observe that there was no hearing to adjourn. Second, the appellant had specifically requested a paper determination and it was not for the judge to question his instructions. Third, he had paid for a paper determination and not an oral hearing. In the alternative, it was submitted that the judge should have remitted the matter to the Secretary of State for her to obtain further evidence. The burden in immigration cases lies with the appellant. It was not for the judge or the Secretary of State to make out the appellant's case for him. It was his duty to ensure that all the relevant facts and evidence was put before the judge. One wonders how he expected a positive decision with so little evidence. It is all very well to now seek to correct his failings, but none of his current actions show that the judge made any errors of law when determining the appeal.
11. The judge did what she could with the limited evidence available. She took account of the child's best interests (in paragraphs 17-18). She noted that the child was living with her grandparents, that the appellant was not her biological father and that there was very little evidence of any involvement the appellant had in the care and upbringing of the child. On the basis of the evidence before her, she reached the only possible decision. The appellant failed to make out his case; indeed he failed to even try to do so. The attempts to rectify his failings have come too late and in any event do not establish any errors of law in the determination.

12. I have not relied on the statements of evidence now submitted or on the guidance notes Counsel adduced; these documents were not before the judge. Should the appellant have evidence he now seeks to rely on, it may be more appropriate for him to make a fresh application either in country or from Nigeria once he has departed. His representatives will be able to advise him.

**Decision**

13. The First-tier Tribunal Judge did not make any errors of law. Her decision to dismiss the appeal on all grounds is upheld.

**Signed:**

**Dr R Kekić  
Judge of the Upper Tribunal**

17 March 2014