



IAC-FH-AR-V2

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

Appeal Number: IA/44407/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18 November 2015**

**Decision & Reasons Promulgated
On 4 December 2015**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ANTHONY CHIMAKPA ONUOHA

Respondent

Representation:

For the Appellant: Ms A Holmes, Senior Home Office Presenting Officer

For the Respondent: Appeared in person and was not represented

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of a First-tier Judge, promulgated on 6 June 2015, allowing Mr Onuoha's appeal against the respondent's decision of 20 October 2014 refusing to grant him leave to remain in the United Kingdom.
2. For convenience I will refer to Mr Onuoha as the appellant, as he was below, and to the Secretary of State as the respondent.
3. The appellant's application for leave to remain was made on human rights grounds. It appears that he has been in the United Kingdom since 2000

when he came into this country on the basis of his relationship with his father who was employed at the Nigerian High Commission. The appellant has remained in the United Kingdom thereafter and his claim was based essentially on his relationship with his son C, who was born on 10 May 2009 to EH, a former partner of the appellant. He has another son, J, by SW, but he does not know where they live and there has been no family life between them and the appellant for many years.

4. By the time C was born the appellant and EH had separated. EH did not appear at the hearing before the Judge. She had provided a statement dated 5 May 2015 and there were also letters from her dated 25 February 2011 and 27 July 2014. It appears that she lives in Yorkshire with C, and the appellant lives in London. I note no evidence was produced by the appellant of him travelling to Yorkshire but there were photographs produced of him and a child who, the Judge said, EH would have been able to identify if it was C, if she had given evidence.
5. The Judge accepted that the letter written by EH of 9 May 2015 had been written by her. He said that with some reservations he found the appellant played a part in C's life. He said it would be in C's best interests to have direct contact with his father. C is a British citizen and it was not reasonable to expect C and his mother to live in Nigeria. Under paragraph 117B [of the 2002 Act] the Judge found the appellant was in a genuine and subsisting parental relationship with a qualifying child and also took into consideration the number of years he had lived in the United Kingdom and that he was of good character. He concluded that it would not be proportionate for the reasons set out above to remove the appellant from the United Kingdom.
6. The Secretary of State sought and was granted permission to appeal against this decision, on the basis that the Judge's findings did not establish that the appellant was in a genuine and subsisting parental relationship with C as the Judge had failed to enunciate the extent of his input into C's life and the impact his removal would have. It had therefore not been established that the appellant formed a fundamental part of C's best interests which were clearly realised by being with his mother who provided his fundamental needs and had done so since his birth. It was also argued that to refer to the respondent's failure to provide expert evidence to disprove the contention that C's mother wrote letters in support of his application unlawfully placed the burden on the Secretary of State and it was argued that it was for the appellant to establish with sufficient evidence that he enjoyed a meaningful relationship with C; he had failed to do so. It was also argued that the Judge failed to consider whether C's best interests were outweighed by countervailing factors and the public interest in maintaining effective immigration control and that the decision to allow the appeal on Article 8 grounds was rendered unsound by the failure to adopt a proportionality exercise. In effect the best interests of the child had been elevated to a trump card.

7. Mr Onuoha appeared without representation. A letter had been received from his previous representative stating that they were no longer instructed and would not be attending. I explained to Mr Onuoha the difficulties he might face in arguing that there was not an error of law in the Judge's decision, bearing in mind that he is not a lawyer and would be confronted by Ms Holmes' argument that there was an error of law. He said that he did not work and had not worked for some time and would be unable to afford a lawyer's fees and therefore he preferred to go ahead. I gave him a copy of the bundle, drawing his attention to the Judge's decision, which he had previously read, and also to the grounds of appeal. In addition I drew his attention to a Rule 24 response which had been put in on his behalf by his previous representative.
8. Ms Holmes relied on and developed the points made in the grounds. As regards ground 1, she argued that the relationship had not been made out. Paragraph 27 of the determination was very brief and contained no real analysis or explanation of its conclusions. She placed little weight on the third point in ground 1, given that it came into the territory of forgery where the burden was on the Secretary of State. With regard to the second ground she argued there had been a failure to factor in the public interest, again at paragraph 27. There, there was a reference to section 117B, but there was no reference to immigration control being in the public interest. It was of assistance to no-one to have such a limited, inadequate analysis and the decision was flawed by material errors of law.
9. In his submissions Mr Onuoha said that he played a father's role in his son's life. He travelled to Yorkshire two or three times a month, and sometimes C came to London to see him as well. He had travel documents the Home Office had sent and he had pictures of his son. He was here to plead to the Home Office to consider his circumstances. That was so that he could be there more for his son. As he had not been working for six years he would love to see him more but could not see him as often as he would like and friends covered travel expenses. He thought that paragraph 27 of the determination was a perfectly adequate summary of the situation. Also he had come to the United Kingdom when he was under age and had been here for a long time and had never been in any trouble or involved in criminal activity. He was here to plead to be allowed to play a more fatherly role in his son's life. Things had been difficult for the last six years and he had had to beg many people to get money to see his son and it was not fair. It was his birthday today and he would have liked to have spent it with his son but there were the usual problems with money.
10. I reserved my determination.
11. It may help Mr Onuoha if I say at the outset that I do not think he was disadvantaged by the absence of legal representation, in the sense that, although there were points that could have been made on his behalf, they could in my view have made no difference to the outcome. The matters set out in the Rule 24 response endorsed the reasoning and conclusions of

the Judge and argued that he gave proper consideration to the relevant issues. It is argued that the appellant's circumstances were considered in the round and the appeal was properly allowed.

12. These matters in no sense engaged with the weakness of the Judge's reasoning. The essential reasoning is to be found in brief at paragraph 27 of the determination. I agree with all the points made in the grounds of appeal and endorsed by Ms Holmes and, I say, I do not think that even the most capable legal representative would have been able to transform the determination into something more substantial. The Judge moved from a finding that with some reservations the appellant plays a part in C's life to a conclusion that he is in a genuine and subsisting parental relationship with him. His findings in this regard entirely lack reasoning. The two elements cannot be equated. Playing a part in someone's life in no sense shows that there is a genuine and subsisting parental relationship. As the grounds, say the Judge failed to enunciate the extent of the appellant's input into C's life and the impact on C that his removal would have.
13. In addition the conclusion that C's best interests are to have direct contact with his father has in effect been elevated to a determinative factor. There is a failure by the Judge to take into account the public interest in maintaining effective immigration control, including, as Ms Holmes noted, the fact of immigration control being in the public interest being part of the section 117B analysis. There has been a total failure on the part of the Judge to give the kind of detailed careful evaluation of the evidence in the context of the correct legal tests that was necessary in this case. In the circumstances I can see no alternative but to direct that the appeal be reheard in its entirety at Hatton Cross before a different First-tier Judge.

Signed

Date

Upper Tribunal Judge Allen