Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/20358/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 March 2015	**On 13 March 2015**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

DENIS LUBANGA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER NAIROBI

Respondent

Representation:
For the Appellant: Mrs Josephine Lubanga (the appellant's wife)
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. Even though this case touches on the welfare of children I see no need to restrain publication of details of the case and I make no order.
2. This is an appeal by a citizen of Uganda against a decision of the Entry Clearance Officer in Nairobi to refuse him entry clearance to the United Kingdom to settle with his partner and her child in the United Kingdom. The application was refused under the Immigration Rules for two reasons. It was refused with reference to paragraph 320(11) of HC 395 and it was refused under EC-P.1.1(c) of Appendix FM at S-EC2.2(b).
3. The Entry Clearance Officer decided that the appellant had previously acted in a way to frustrate the intention of the Immigration Rules and that there were aggravating factors.
4. I do not see how there can be any doubt about these findings, which where upheld by the First-tier Tribunal, because the appellant admitted that he had indeed used false documents in order to obtain work and he

has used false identities, which misconduct is identified as an example of aggravating circumstances in the rules. In an effort to justify himself the appellant said that he only used the assumed identities to obtain work to survive because he could not work legally in the United Kingdom. The rather obvious point has to be made the proper thing to do was to leave the United Kingdom rather than pretend to be somebody else.

5. There is some discretion under rule 320(11). It provides that refusal of entry clearance should *normally* be refused when the rule is engaged. Save for what is said below about the appellant's personal circumstances, I see no basis for going behind the finding that the normal consequence should follow here.

6. The other part of the decision is consequential on the appellant having been to prison for five months. This makes him "unsuitable" within the Rules. It follows therefore that ordinarily the application should have been refused under the Rules as indeed it was.

7. Mrs Lubanga says that she was upset and offended by the way the Entry Clearance Officer or someone on the Entry Clearance Officer's staff treated her. There was no interest in documents she wanted to rely on and at some point there was a suggestion that she should raise her child in "your culture" or "your country". Although Mrs Lubanga has family members who are citizens of Uganda she is a citizen of the United Kingdom. There must be some room to debate the meaning of "your culture" because it is an imprecise term but Mrs Lubanga's country *is* the United Kingdom. If, as she claims, she was told to raise the child in accordance with her culture or her country, meaning outside the United Kingdom, then she had reason to feel gravely insulted. Those who assume that a person with black skin necessarily identifies with a culture or country that is not British are profoundly wrong and any contrary view should be expunged from those who serve the public. I cannot take this further as it was not material to the case before me. I have not heard the Entry Clearance Officer's comments. I hope that there was some misunderstanding but Mrs Lubanga was clearly upset and if her understanding about what was said is correct then she had every right to be upset.

8. The appeal came before the First-tier Tribunal who upheld the findings of fact but permission was granted by First-tier Tribunal Judge Brunnen because as he put it "the grounds submit that the judge failed to give adequate consideration to the best interests of the appellant's children and this is arguable".

9. Mrs Lubanga explained that there are two relevant children; one of them is the natural child of the appellant who is now I think 6 years old and the other is her own daughter girl who is now 7 years old or close enough to that age for the distance not to matter.

10. However she also told me, and I have no reason to think this is anything other than wholly correct, that the appellant has not had contact of any kind with his natural child since the mother stopped it when she discovered the relationship the appellant had with Mrs Lubanga. That is

now over three years and it is unrealistic to think that it is in that child's interests for her father to be in the United Kingdom. It is clear that there is no basis to think that any kind of contact can be resumed. Mrs Lubanga told me that even attempts to give presents have been rebuffed.

11. As far as her own child is concerned, she says that child refers to the appellant as "daddy". However they only cohabited as a family for a period of about six months. It is clear to me that her child has not established a quasi-parental relationship which just might have made a difference to the ordinary application of the rules. Whilst the First-tier Tribunal's determination would have been improved by specific consideration of the circumstances of the children associated with the appellant, the fact is that the appellant's circumstances do not satisfy the requirements of the Immigration Rules and I cannot see how the most diligent examination on the part of the First-tier Judge would have led to his allowing the appeal under the Rules or outside the rules on human rights grounds.

12. This is a case of a man who by reason of his own misconduct has made it difficult for him to return to the United Kingdom. It is not impossible that he can do that lawfully one day. Once the requisite time has lapsed since his being sentenced to imprisonment he might, by reason of the strength of his relationships in the United Kingdom, be able to show that the normal consequences of his previous misbehaviour do not apply in his case. However I make it plain that I am not making any findings on this point. I am merely pointing out to an unrepresented litigant that this is something that he might like to explore in the future.

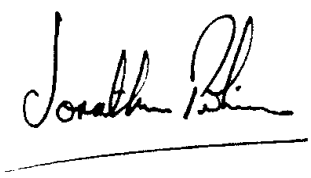
13. I want to put on record that Mrs Lubanga conducted herself with considerable dignity before me, listening carefully and understanding the points I was making to her and addressing me clearly and concisely about the appellant's case. I make the decision because it is the one I think that is right in law. She must not reproach herself in any way. She has done all that could have been expected of her and I record my appreciation of that.

14. My decision is that there is no error of law so the appeal is dismissed.

Notice of Decision

The appeal is dismissed.
No anonymity direction is made.
I have dismissed the appeal and therefore there can be no fee award.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 12 March 2015