IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05416/2014

THE IMMIGRATION ACTS

Heard at Centre City Tower Hill, Birmingham **On 12th February 2016**	**Decision & Reasons Promulgated** **On 3rd May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR OSCAR OKUTTWA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representation
For the Respondent: Mr D Mills (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge V A Osborne, promulgated on 11th September 2014 following a hearing at Bennett House in Stoke-on-Trent on 2nd September 2014. In the determination, the judge dismissed the appeal of Mr Oscar Okuttwa, who

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subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Grant of Permission

2. On 19th January 2015 permission to appeal was granted by the Upper Tribunal in this matter, with the observation made by the Tribunal that,

> "Having read the determination of the First-tier Tribunal in the light of the original application, I find that I am in agreement with First-tier Tribunal Judge Bartlett; this application fails to identify any properly arguable error or mistake of law on the part of the judge. Judges are required to give considerable weight to the interests of the wider general public in the maintenance of immigration control".

3. On 10th March 2015, a Rule 24 response was entered by the Secretary of State to the effect that the notice of decision granting the Appellant permission for leave to appeal had been sent out in error. This being so, the Respondent will submit that the oral hearing is not required to correct this administrative error.

Submissions

4. At the hearing before me on 12th February 2016, the Appellant, appearing in person, submitted that the Grounds of Appeal were to the effect that the First-tier Tribunal Judge had given insufficient consideration in paragraph 49 of the determination to the effect of the new Section 117B of the NIAA 2002, specifically Section 117B(6), where the public interest is defined in relation to the removal of a person with a genuine and subsisting parental relationship with a qualifying child. The First-tier Tribunal Judge had found it reasonable in terms of paragraph 117B(6) for the child to leave the United Kingdom accompanied by his parents. The Appellant maintained that this was an arguable error of law.

5. Second, the Appellant submitted that his situation had now changed from the time that the Grounds of Appeal had been submitted. He said that his wife had been pregnant the last time. However, she has now given birth to their child. The wife has leave to remain and she has been given five years of stay. The Appellant said that he himself also applied for leave to remain but his application was rejected summarily with no reasons given, and no right of appeal given.

6. For his part, Mr Mills submitted that the Rule 24 reply makes it clear that the grant of permission is in error. What Upper Tribunal Judge Chalkley intended to do was to refuse permission. This is quite clear if one looks at the body of his reasons which are plainly intended to show that the decision was simply unchallengeable. However, at the bottom it is said that permission is granted. This is in error.

7. Second, if the Appellant's application for leave to remain has now been rejected, it is only because he already has an extant right of appeal, which

appeal has today been heard, and it is only when all rights of appeal have been exhausted, that the Home Office will entertain a new application for permission to remain. It is therefore up to the Appellant to make his application again, on the basis that his wife has leave to remain, and their child has now been born, and that they exist as a family unit within this country and that he has an Article 8 to remain here.

Decision

8. This is a case where on 2nd October 2014, First-tier Tribunal Judge Bartlett refused permission to appeal on the basis that, the challenge in the Grounds of Appeal being on the basis that Section 117B had been wrongly applied, was doomed to failure because the judge “expresses adequate reasons for reaching the conclusion made in reference to Section 117B(6) and the other public interest considerations specified in Section 117B” (see paragraph 3).

9. When the Appellant exercised his right to seek permission in the Upper Tribunal, UTJ Chalkley, expressly referred to the decision below and stated that, “I am in agreement with First-tier Tribunal Judge Bartlett; this application fails to identify any properly arguable error or mistake of law on the part of the judge”.

10. For some bizarre reason the entry at the bottom of the page then is that “permission to appeal is granted”. It is plain that this was a mistake. The Upper Tribunal intended to refuse permission. Furthermore, nothing that the Appellant has said today in any way persuades me otherwise.

11. There has been a change of circumstance in his life and it is appropriate for him to make an application on the basis of these changed circumstances.

12. However, as far as this particular application is concerned today, it cannot proceed any further. No permission to appeal has been granted.

13. The appeal is dismissed.

14. No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 29th April 2016