



IAC-FH-AR-V1

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

Appeal Number: IA/11246/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1<sup>st</sup> December 2015**

**Decision & Reasons Promulgated  
On 5<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**EMMANUEL AYENI  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Miss J Isherwood, Home Office Presenting Officer

For the Respondent: Mr B Hawkin, Counsel, instructed by Paul John & Associates

**DECISION AND REASONS  
EX TEMPORE JUDGMENT**

1. The Secretary of State appeals with permission a decision of the First-tier Tribunal promulgated on 23<sup>rd</sup> February 2015. In that decision the First-tier Tribunal allowed the claimant's appeal against removal on the basis that although he did not satisfy the requirements of the Immigration Rules falling foul of the suitability requirements set out at the Article 8 provisions in Appendix FM at S-LTR1.5 and S-LTR1.6 his removal was nonetheless disproportionate in the context of the factors set out at Section 117B of

the 2002 Nationality, Immigration and Asylum Act 2002 as amended by the 2014 Act.

2. The First-tier Tribunal concluded that the claimant's enjoyment of a genuine and subsisting parental relationship with a qualifying child, a British national who could not reasonably be expected to leave the United Kingdom, meant that even though effective immigration control is in the public interest that in the circumstances the provisions of the statute were prescribing their considerations to the point that phrase "the public interest does not require the claimant's removal" meant that the interests of the child outweighed the public interest in removal.
3. The grounds complain that in making the assessment the matters which formed the basis of the failure to meet the suitability requirements of the Immigration Rules, namely the claimant's persistent use of cannabis and his association with drug dealers in that context, and his choosing to associate with people who carry weapons, fell out of the equation or proportionality mix, to the point that the weighing of the public interest has been incorrectly conducted. The Respondent also refers to the claimant's inability to be financially self-sufficient or financially independent in the context of Section 117B, as a matter which should have counted against him.
4. Mr Hawkin for the claimant points out that the Tribunal had taken into account the claimant's history. They had also taken account of his poor financial position because it is set out quite clearly at paragraph 216, but in any event the decision was correctly made with reference to s117.
5. The difficulty with the Secretary of State's argument is that in the context of Section 117 the suitability requirements as set out in the Immigration Rules are not replicated, and on the face of the statutory wording I am satisfied that there is no ambit for reintroducing the provisions of the Rules as a gloss on the statutory provisions. In that regard the references to ZH (Tanzania) and the ability for countervailing factors including for example conduct of an Appellant and poor immigration history to outweigh the best interests of a child are of no avail to the Respondent's arguments because the test is not that test. The test is that which is set out at 117B(6).
6. In those circumstances I am satisfied that the decision of the First-tier Tribunal reveals no material error of law; it follows correct self direction in the context of the statute.

### **Notice of Decision**

7. There is no error of law, and the decision of the First-tier Tribunal allowing the Appellant's appeal stands.

Signed

Date

Deputy Upper Tribunal Judge Davidge