



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

Appeal Number: HU051352016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6<sup>th</sup> June 2017**

**Decision & Reasons  
Promulgated  
On 23<sup>rd</sup> June 2017**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**E L D  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a judgment of Judge S J Clarke of the First-tier Tribunal promulgated on 11<sup>th</sup> November 2016 following a hearing at Taylor House. On that occasion the Appellant was represented by Counsel and the Secretary of State by a

Presenting Officer. This morning, whilst we have a Presenting Officer in the form of Mr Clarke we have no appearance by or on behalf of the Appellant despite notices being sent both to the Appellant at the address held on file and to his solicitors.

2. The Appellant has quite a history in the UK, there is some dispute as to the time when he first arrived because at some point he had claimed to have been born here but it seems from an earlier application that he probably arrived in about 2001. Then, in 2002 he was arrested and he served three years for supplying class A drugs. That conviction was in 2003. Ten years later, in 2013 the Secretary of State started deportation proceedings and made a Decision to deport him, which the Appellant did not appeal. However, the Appellant then made an application, the refusal of which was the subject of the appeal before the First-tier Tribunal, for leave to remain on Article 8 grounds. By this time the Appellant had two children from a relationship with a [P], born in August 2013 and January 2015. The first child was, I notice, born prior to the deportation proceedings starting, but of course after the commission of the offence and the second child born after that. He relied on his relationship with [P] and the children in his appeal. [P] has a diagnosis of schizophrenia and has in the past been hospitalised and during that time her children were cared for by members of her family, notably not the Appellant. She is now in the community with her illness stabilised with depot medication administered on a monthly basis by a community psychiatric nurse.
3. The judge found on the basis of the evidence before him, which was contradictory between the Appellant and [P], that the Appellant did not live with her and his regular visits to her property were in relation to assisting with the children rather than a relationship with her. The judge noted the amount of support she had elsewhere in the UK from her own family and also that she had an adult son also living with her. He noted that her mental state was stable on depot medication, he took into account the conviction for what is a very serious offence and also the fact that since then he had had two subsequent cautions, one drug related in 2008 and one for using threatening, abusive or insulting words and behaviour in 2012. Additionally, the Appellant has been living in the UK illegally for many years and cannot be said therefore to be a law abiding citizen. The judge dismissed the appeal.
4. The Appellant's representatives sought permission to appeal arguing that it was an error of law for the judge to find no subsisting relationship between the Appellant and [P] when that had not been put in issue by the Secretary of State. Then the grounds took issue with the various findings about the ability of other family members to provide support and the correctness of the finding that it was proportionate to remove the Appellant. The first ground, which seems to me to have had the most strength is simply not borne out by the papers. It is not true to say that the relationship was not put in issue by the Secretary of State because it quite clearly is. At paragraph 29 of the Letter of Refusal, the Secretary of State says:- "it is not accepted that you have a genuine and subsisting

relationship with [P]. You do not cohabit with [P] and there is no evidence within the representations dated July 2015 and December 2015 to substantiate that you are presently in a genuine and subsisting relationship.”

5. Having thereby dealt with the most significant ground I move on to the others and these amount, in reality, to a disagreement with the findings by the judge, all of which are reasoned and open to him on the evidence. The Appellant’s appeal to the Upper Tribunal is dismissed.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 23<sup>rd</sup> June 2017

Upper Tribunal Judge Martin

**TO THE RESPONDENT  
FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 23<sup>rd</sup> June 2017

Upper Tribunal Judge Martin