



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

Appeal Number: IA/21279/2015

**THE IMMIGRATION ACTS**

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

**Decision & Reasons Promulgated  
On 3<sup>rd</sup> July 2017**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**MR GODFREY JONATHAN PHIRI**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Olawanle, of counsel, instructed by Del & Co, solicitors

For the Respondent: Mr Melvin, Home office Presenting officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of South Africa who came to the United Kingdom in May 2002. From March 2007 he has remained in the United Kingdom unlawfully.
2. He sought leave to remain on the basis of family and private life, which leave was refused by a decision dated 28<sup>th</sup> May 2015.

3. Although the appellant is married he is currently separated from his wife. He has three children from that relationship namely [J] born on 7<sup>th</sup> November 1994, [Z] born on 1<sup>st</sup> August 1998 and [Ja] born on [ ] 2007. In addition there is a further child of his wife namely [N] born on [ ] 2011.
4. The appellant's wife and children have been granted discretionary leave to remain in the United Kingdom until 8<sup>th</sup> July 2018.
5. The appellant sought to appeal against the refusal decision which appeal came before First-tier Tribunal Judge Sullivan on 29<sup>th</sup> September 2016. In a determination promulgated on 26<sup>th</sup> October 2016 the appeal was dismissed in all respects.
6. The appellant sought to challenge the decision, contending that inadequate consideration had been given to the interests of the children and that no proper regard had been had to Section 117B(6) of the 2002 Act. Permission to mount that appeal was granted and thus the matter comes before me to determine the merits of the challenge.
7. In fairness to the Judge, the determination shows that the Judge did attempt to consider in detail the situation and circumstances of the family and of the children in particular. I note various statements as submitted in the appellant's bundle, but they are somewhat vague as to the reality of relationship with which the children have with the appellant and indeed the nature of their particular circumstances.
8. That having been said, the Judge at paragraph 8 of the determination recognised that Sections 117A, B and D of the 2002 Act had relevance in the analysis that was to be conducted. Sadly, although noting that fact, the Judge did not act upon it. In one sense those provisions do not assist the appellant, particularly Section 117B(4) (5) which provides that little weight should be given to a private life or relationship formed at a time when the person is in the United Kingdom unlawfully or that person's immigration status is precarious. The comments clearly apply to the appellant.
9. However what is also of significance is that Section 117B(6) provides that the public interest does not require the person's removal where that person has a genuine and subsisting parental relationship with a qualifying child and it would not be reasonable to expect the child to leave the United Kingdom.
10. At the time of the hearing [Ja] was a qualifying child for the purpose of that section, he having lived in the United Kingdom in excess of seven years.
11. Had that been appreciated it may have been that the Judge would have focused the examination of the factual circumstances by asking the questions as to whether or not there existed a parental relationship between the appellant and [Ja], if so whether it was reasonable to expect

the child to leave the United Kingdom. Neither question was asked in those terms.

12. It has been submitted to me that overwhelmingly it can be said that it was not reasonable for [Ja] to leave the jurisdiction. That was not a question which was asked or considered in the course of the determination. Indeed I find that even if asked, the answer would not be so definite, as I have been invited to find that it would.
13. The appellant's wife and all the children have no settled status in the United Kingdom other than the leave to remain until 8<sup>th</sup> July 2018. In those circumstances it could be argued that it was entirely reasonable to expect the family to be with the appellant or indeed to join him at the expiry of that leave if not before. Clearly whether it was or was not reasonable would depend upon a proper analysis of the family situation. This was not done.
14. Although there was some consideration as to the link between the children and particularly [Ja] and the appellant, the precise consideration of parental relationship did not arise in those terms. There is some suggestion that financial support was given from time to time although its nature was not entirely clear. There was also a suggestion of visits made although they would seem to be fairly infrequent.
15. Linked with such matters arises the situation of [N]. The Judge found that [N] was not the child of the appellant and therefore that the appellant had no parental relationship with him. It seems to me that that flies in the face of the reality of the situation that [N] is part of the family, lives in the household with the appellant's wife and children.
16. Curiously there is very little evidence that has been adduced about him as to the circumstances in which he came to be born and the relationship that the appellant's wife had or has with the natural father of [N]. I was told at the hearing that he has no contact with his natural father. If so it raises again the question of what parental responsibilities if any have been accepted by the appellant towards [N]. Again I have been told at the hearing that the appellant takes [N] and [Ja] out, seemingly treating him as his child. It seems to me in those circumstances that it is simplistic simply to ignore [N] as part of that family group as the same questions need to be properly asked as to whether there is any parental relationship with him and indeed even if there is not what are his best interests under Section 55 of the Act of 2009. It is clearly relevant to the issue of reasonableness of removal of [Ja] to be looked at in the whole context of the reasonableness of removal of the family as a whole. In those circumstances I find material errors of law such as to set aside the decision of the First-tier Tribunal such that the decision should be remade.
17. I was invited to retain it in the Upper Tribunal and remake the decision myself on the basis of the evidence as presented. For reasons, which I

hope I have made clear, it seems to me that much more thorough examination as to the family situation and circumstances needs to be conducted. It will be a matter for the appellant and his representatives to provide such evidence as would assist in the proper and fair resolution of the issues to which I have made reference.

18. In those circumstances and in accordance with the Senior President's Practice Direction, I remit the matter back to the First-tier Tribunal for a de novo hearing.
19. The issue of costs will be determined by the First-tier Tribunal upon completion of that appeal.



Signed

Date 28 June 2017

Upper Tribunal Judge King TD