



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03517/2016

THE IMMIGRATION ACTS

Heard at Field House
On 23rd February 2018

Decision & Reasons Promulgated
On 04th April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MR OLUKUNLE MOBOLAJI AKINOLA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Kotak, Counsel
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria whose date of birth is recorded as 17th August 1965. On 11th September 2015 he made application for leave to remain in the United Kingdom on human rights grounds. On 25th January 2016 a decision was made to refuse the application. The Appellant appealed. On 5th June 2017 the appeal was heard by Judge of the First-tier Tribunal G Jones QC, sitting at Hatton Cross. Judge Jones dismissed the appeal. Not content with that decision by Notice dated 12th June 2017 the Appellant made application for permission to appeal to the Upper Tribunal. On 14th December 2017 Judge of the First-tier Tribunal Brunnen granted permission.
2. Given the way in which this matter proceeded before me it is not necessary for me to set out in any great detail the background but the principal complaint made by the

Appellant was that by the time of the hearing in the First-tier Tribunal he, the Appellant, had been lawfully in the United Kingdom for ten years and his eldest child had been in the United Kingdom for over eight years. It was argued that the judge had erred in law because he took the relevant date as the date of the application rather than the date of the hearing. Additionally, although reference was made to Section 55 of the Borders, Citizenship and Immigration Act 2009, no sufficient consideration if any was given to the statutory provisions in Section 117B(6) which relates to children who have been in the United Kingdom for seven years provided they are qualifying children, which in this case the particular child was.

3. Mr Walker conceded quite properly, and I would have found in any event, that there was a material error of law. The Appellant had filed and served a 'Section 120 Notice' which ought to have been taken into account by the judge but was not and so I set aside the decision of the First-tier Tribunal and remake the decision. Again I am grateful to Mr Walker because he accepts that in the remaking, given the ten years' lawful residence, and given the change in circumstances which have now happened in relation both to the Appellant and to his partner who now has status in the United Kingdom and still further, given the failure to consider Section 117B(6), Mr Walker accepts quite properly that the appeal should be allowed. Again, I would have so found. In the circumstances the appeal is allowed.

Notice of Decision

4. The decision of the First-tier Tribunal is set aside. I remake the decision such that the appeal is allowed.
5. No anonymity direction is made.



Signed
Deputy Upper Tribunal Judge Zucker

Date: 27 March 2018

TO THE RESPONDENT
FEE AWARD

I make a full fee award in the sum of £140.



Signed
Deputy Upper Tribunal Judge Zucker

Date: 27 March 2018