



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/23561/2016

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 8th June 2018

Decision and Reasons Promulgated
On 22nd June 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

O K O
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Karnik, instructed by Greenfield Law solicitors
For the Respondent: Ms A Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as OO. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. Permission was granted by First-tier Tribunal Judge Bird to the appellant to appeal the decision of First-tier Tribunal Judge Holt who dismissed his appeal against the refusal of his human rights claim. His claim had been based upon

his relationship with 2 children born in the UK who have limited leave to remain based on humanitarian protection and with a British Citizen child. At the date of the hearing before First-tier Tribunal Judge Holt the appellant had indirect contact with the two children with limited leave to remain and direct contact with the British Citizen child.

2. Permission was granted on the grounds that it was arguably an error of law to treat a decision of DJ Regan as final and to refuse to grant an adjournment to obtain further evidence in failing to follow the protocol and allow for further contact between the appellant and the children.
3. Permission had also been sought on the grounds that it was arguable that because he had direct contact with the British Citizen child, he met the requirements of E.LTRPT.2.4. and that the finding by the judge that he did not have sole responsibility was not a determining factor. The appellant further contended that First-tier Tribunal Judge Holt failed to consider the best interest of any of the children.
4. I was not persuaded that the order of DJ Regan was not a final order and that the application for an adjournment should have been granted. Ms Aboni conceded that there had been no consideration by the judge of the best interests of the children.
5. Mr Karnik also submitted that there was a clear route through the Rules under which the appellant could and should have succeeded and the judge failed to address this he also submitted that although the appellant had not advanced a formal protection claim, he was still entitled to rely on matters that he had referred to about events in Nigeria and yet no consideration had been given to this.
6. The failure of the judge to consider the best interest of the children is a plain error of law. It is material given the possible successful route through the Rules to a successful claim, irrespective of Article 8 in its widest sense.
7. The judge's findings generally are rather confusing and appear to take matters into account that do not appear to have been raised as adverse issues.
8. I am satisfied there are material errors of law in the First-tier Tribunal Judge's decision such that the decision is set aside to be remade.
9. Findings are required on the relationship the appellant has with the children, his intentions and the best interest of the children in the context of his contact. The extent of fact-finding required is such that this matter should be remitted to the First-tier Tribunal.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit it to the First-tier Tribunal to be re-made.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 20th June 2018

A handwritten signature in blue ink, appearing to read "Jane Coker".

Upper Tribunal Judge Coker