Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08261/2018

THE IMMIGRATION ACTS

Heard at RCJ Belfast	**Decision & Reasons Promulgated**
On 5 December 2019	**On 24th December 2019**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

DINEPEMI [B]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Jebb, instructed by Nelson-Singleton Solicitors
For the Respondent: Mr Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Farrelly promulgated on 29 January 2019 in which he dismissed the appellant's appeal against the decision to remove her from the United Kingdom subsequent to the failure of her protection and human rights claim.

2. The judge noted that the appellant is a citizen of Nigeria and has three children, two of whom are twins. One of the children was born in December 2007 and was brought to the United Kingdom on 28 October 2012 which is relevant for the purposes of this appeal. In this case the

judge found at paragraph [19] that the appellant's children were in the position of having a family life with them and the mother, that the Secretary of State's intention was to preserve family unity by returning the family to Nigeria as a unit and he found that they do not meet the requirements of the Immigration Rules, finding that the youngest child was not a qualifying child. He found it had not been established they would not be able to integrate into life in Nigeria. He then went on at paragraph 20 to consider the issue of best interests, finding that on balance this lay with them being able to remain in the United Kingdom. At paragraph [21] he found that the interests were not determinative and that in the circumstances of this case removal would be proportionate.

3. The grounds of challenge are narrow. The grounds are in short that the judge failed properly to have regard to the fact that the youngest child was approaching the seven year point at which she would have been a qualifying child. The submission being that this ought to have been taken into account in the proportionality assessment.

4. Permission was granted on 16 August 2019 by Upper Tribunal Judge Owens who gave permission but stated that she was particularly concerned that the decision arguably did not reflect the fact that the relevant child was a qualifying child when the decision was promulgated.

5. As a preliminary matter I drew the representatives attention to the fact that there had been an arithmetical error by the judge. It is accepted quite fairly by Mr Jebb that this is so.

6. I consider that in this case the judge quite properly made findings regarding the children's best interests. I consider that it cannot be said that in this case he did not have regard to the circumstances of the family and of the child in particular. He records that the child is not a qualifying child which indicates that he did have consideration of the issue. He made findings about their best interests. He noted that they had been provided with healthcare, education and so on.

7. Whilst it is correct that the judge does not directly refer to the fact that the child is nearly a qualifying child, that is not in my view capable of amounting to a material error. This is not a case in which there was, for example, any material tending to show particular difficulties, or a independent report from a social worker. Further, the relevant date for consideration of the position of the child is the date of promulgation, 29 January 2019. Since then, there has been a material change in that the child has now been here for over seven years, but that is not something that can be taken into account in determining whether there is an error of law.

8. As Mr Govan submitted, this situation has to be looked at in the real world context, the parent has no right to be here and in line with KO (Nigeria) and the other factors which have to be taken into account as set out in Section 117B, bearing in mind that the requirement of immigration control

is a factor which attaches significant weight, it could not be said, even were it arguable that the judge ought to have taken this factor into account, that it would have been a material error given the very strong interest in maintaining immigration control and the fact that the child had not yet reached the threshold of becoming a qualifying child and accordingly for these reasons I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Notice of Decision

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it

2. No anonymity direction is made.

Signed Date 18 December 2019

Upper Tribunal Judge Rintoul