Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10044/2017

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 4 June 2019	**On 27 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

DUNCAN [L]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Mrs H Aboni, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Malawi, date of birth 28 February 1980, appealed against the Respondent's decision dated 22 August 2017 to refuse an application made under the ten year provisions in Appendix FM of the Immigration Rules. His appeal came before First-tier Tribunal Judge Garbett (the Judge) who on 4 May 2018 dismissed his appeal on human rights grounds and also somewhat surprisingly under the Immigration Rules. Nevertheless the Judge concluded, through the prism of the Rules,

that the Appellant's claim could not, as then, raised succeed on Article 8 ECHR grounds.

2. Permission to appeal was granted on 7 August 2018 by First-tier Tribunal Judge Gibb concentrating somewhat on the issue of the Appellant's daughter's nationality and what might have been a contradiction between the Judge's conclusion that she did not have jurisdiction to make any findings in relation to the Appellant's child's British nationality and yet at another paragraph in the decision reached a finding that the Appellant's daughter was not a British national. The contradiction was not actually a real one in that at the material time there had been no registration of the Appellant's daughter as a British citizen and no British passport had been issued to acknowledge that status. The position has now moved on since the date of the Judge's decision in that the Appellant's child was issued with a British national passport on 5 September 2018. The mother of the Appellant's child remained a person with indefinite leave to remain and has been long settled in the UK.

3. I conclude therefore on the primary ground of concern that the Judge did not at the date of the hearing make any error of law as to the status of the Appellant's child. What has moved on is just that were an application to be made on the parent basis it was clear that the wider considerations relating to the child as a British national and the settled status of the child's mother in the UK that the considerations before the Secretary of State would be materially different.

4. The Judge also in considering the wider issue of proportionality through the prism of the Immigration Rules gave some consideration to the evidence that had been partially produced, through no fault of the Appellant, as to him and his wife's joint earnings which would in respect of another aspect of the Rules have been met. The Appellant fairly admitted that whilst he provided the information to his then lawyers representing him they did not include it in the bundle before the Judge. Therefore the

adverse comments which the Judge had made about maintenance provision was probably as a fact right on the evidence before her but nevertheless as a fact it may be that had the material been properly provided by the representatives this issue would not have been of concern.

5. I therefore looking at the arguments raised conclude notwithstanding what appeared to be the appropriate grant of permission that this is a case where there is no arguable material error of law by the Original Tribunal.

NOTICE OF DECISION

The Original Tribunal's decision stands. The appeal is dismissed.

ANONYMITY ORDER

No anonymity order was made nor is one required or is it necessary.

FEE AWARD

A fee was paid but the appeal having failed no fee award is appropriate.

Signed Date 20 June 2019

Deputy Upper Tribunal Judge Davey