Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/29551/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 March 2015	**On 23 April 2015**
Prepared 9 March 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR N K I
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Paramjorthy, Counsel, instructed by Quality Solicitors
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Nigeria, date of birth 6 May 1968, appealed against the decision of First-tier Tribunal Judge R J N B Morris (the judge), dated 27 November, 2014 whereby she dismissed the appeals under Immigration Rules and Article 8 ECHR.

2. Permission to appeal that decision was given by First-tier Tribunal Judge Landes on 21 January 2015.

3. The basis of the challenge to the judge's decision, upon which permission was granted, covered a range of grounds. In particular, argued before me, was the issue of whether the judge had correctly addressed the evidence relating to contact between the Appellant and his three children, SI (dob 24 April 2002), STI (dob 5 December 2006) and EI (dob 23 June 2008).

4. In particular criticism was made of the fact that the judge in addressing the Article 8 considerations expressed herself as doing so at the date of the Respondent's decision, which was 25 June 2013, rather than, bearing in mind it was an in country appeal, the date of the hearing before the judge. In reply it is said, by the Respondent, in the round that read as a whole it is plain that the judge did not in fact constrain the evidence to that date in coming to the decision that she did.

5. It is undeniable as a matter of fact that the judge did refer to after arising issues of fact after 23 June 2013. How it came to pass that she did not express herself with reference to the later date is difficult to see. It may be that it is an error which arose from confusion at the hearing rather than an error from the misapplication of the law. I do not have to resolve that matter.

6. It is enough to say that the judge in circumstances that are perhaps surprising took into account after the date of hearing documentation provided which touched directly upon the extent of contact between the Appellant and his three children. On one hand the judge, as recited at paragraph 6 of the determination was in receipt of a letter from the children's mother in which she stated that the children had refused to have contact with the Appellant. The impression certainly was given to the judge that that was indeed what was happening. Yet on the other hand

the judge took into account and considered information relating to contact by the appellant with the children provided by the Contact Centre to the Appellant's legal representatives. The differing factual positions are not resolved: I find the judge's failure to do so is potentially significant in terms of the outcome of the appeal. It does not seem to me at this stage, when I am not considering the overall merits, to be determinative.

7. A further criticism made, which really may be no more than a disagreement with findings, is the extent to which the judge has analysed the best interests of the children as a relevant consideration bearing in mind, implicit in the view she came to, the extent to which the Appellant has some relevance in the lives of the children: For she opined that using Skype or other electronic means would be sufficient to maintain the intended relationship; recognising as she did the future absence of direct contact being at odds with that which would, in most cases, be regarded as desirable.

8. I find without going through the extensive grounds of appeal that the decision of the judge represents a material error of law in failing to properly and adequately address the issue of contact. It is extremely unfortunate that I am driven to that conclusion by the identified errors because in many respects the decision was extremely thorough and provided a great deal of information underlying the judge's decision.

9. The Original Tribunal's decision cannot stand. It is appropriate for the decision to be remade in the First-tier Tribunal.

Directions

(1) Remade in the First-tier Tribunal not before First-tier Tribunal Judge R J N B Morris
(2) Time estimate: 2 hours
(3) No interpreter needed

(4) Any further documents or statements relied upon to be served not later than 14 working days before the date of the hearing for remaking the decision.

(5) Any additional bundles of documents to be served 14 days before the further hearing.6. No findings of fact to stand unless agreed between the parties and provided to the Tribunal in writing.

An anonymity order is both appropriate and necessary in the circumstances of the case.

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 23 March 2015

Deputy Upper Tribunal Judge Davey