



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/30067/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4 March 2016**

**Decision & Reasons Promulgated
On 13 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**EDWARD ADEKOYA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Fouladvand, Migrant Advisory & Advocacy Services
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Kelly promulgated on 27 August 2015. It is brought pursuant to the permission of First-tier Tribunal Judge

Grimmett which identified as an arguable error of law the possibility that the judge erred in failing to have regard to paragraph 117B(6) as no reference was made to it in the decision.

2. The facts can be shortly stated. The appellant is a citizen of Nigeria born on [] 1983 and he appeals against an order made for his removal from the United Kingdom. It is said on his behalf that the removal would constitute a disproportionate interference with the family life which he enjoys in this country with his partner who has discretionary leave to remain and with his son, born in 2014, a child yet to be born whom his partner is carrying and with a stepchild who is some 7 years of age. I have used the word "partner" because that was the word adopted by the First-tier Tribunal Judge. I have been told in oral submission that they are in fact married, the wedding having taken place at Willesden Register Office. I have no reason to doubt that but the disposal of this appeal is not in any way affected by their marital status.
3. The alleged error of law as advanced before me today was put on the basis that far too much weight was given to the appellant's poor immigration history with insufficient weight being given to the close familial bonds that exist with the appellant's partner and the children.
4. The judge approached this case by reciting the test to be applied under the **R v Secretary of State for the Home Department ex parte Razgar [2004] UKHL 27**. The decision of the judge is cautious, methodical and fulsome. It recites evidence heard and documentation reviewed and it deals with the factual background particularly in relation to the three children, one of which is unborn. In particular the judge devotes paragraph 29 to a discussion of the appellant's son and the role that the appellant plays in that child's life.
5. In paragraph 30 the judge gives discussion to the unborn born and in paragraph 31 the judge discusses the relationship between the appellant and his stepdaughter.
6. In relation to the son, the finding is clear that child's best interests would best be served by the appellant remaining in this country and continuing to be part of the same household and that is treated as a primary consideration. In relation to the unborn child, similar considerations apply with the judge concluding that in the absence of all other considerations it is clearly in the best interests of the child to have both parents involved in his or her daily upbringing.
7. Finally, in relation to the stepchild, the judge's conclusion is that her best interests would best be served by the appellant remaining in this country as a member of her immediate household.
8. Having set out with great clarity those primary considerations, the judge proceeds to consider the countervailing factors which must apply by dint of Section 117A and 117B of the Nationality, Immigration and Asylum Act 2002. These include reference to the very poor immigration history which applies to this appellant and to the fact

that it is not appropriate for sustainable rights under Article 8 to be acquired whilst an individual's presence in the country is either unlawful or precarious.

9. There is no dispute about the fact that the appellant has a poor immigration history and that he has been unlawfully in the country whilst developing a relationship with his partner and the relevant children. The complaint is made however that too much weight was given to those factors and insufficient weight given to the closeness of the familial tie, the Article 8 considerations of a father being with his children and the overall advantages of maintaining a family unit.
10. Criticism is also made at the judge's suggestion that contact could be made through social media and other means of communication.
11. In paragraph 35 the judge says this:

"I cannot help but conclude that the appellant has deliberately sought to put down roots in this country in an effort to thwart the efforts of the immigration authorities to remove him to his country of origin. This I find must weigh heavily against him."
12. It seems to me that the judge's carrying out of the necessary balancing exercise was undertaken with considerable care. It is true that no express reference is given to Section 117A(6) which reads as follows:

"In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

 - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the United Kingdom"
13. Whilst that statutory provision was not expressly rehearsed in the course of the determination it is clear that the factor was nonetheless borne in mind by the judge in coming to a balanced and fair conclusion. Certainly it was not said that the mere fact that there is a genuine and subsisting parental relationship of itself and without more automatically gives rise to a right to remain.
14. It seems to me that the judge has weighed in the balance the significant factors affecting both the child, the stepchild and the unborn child, and has repeated in express terms at paragraph 36: "I keep in mind at all times that the children should not be punished for the actions of their parents" but at the end of the day the decision is one which the judge must make having regard to the evidence before him.
15. Paragraph 40 to my mind is unimpeachable

