



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

Appeal Number: PA/09039/2016

**THE IMMIGRATION ACTS**

**Heard at City Centre Tower Decision & Reasons  
Birmingham Promulgated  
On 8<sup>th</sup> August 2017 On 25<sup>th</sup> August 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RENTON**

**Between**

**LUNGELWA LLOYD MOYO  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms F Shaw, Counsel instructed by Bankfield Heath Solicitors

For the Respondent: Mrs M Aboni, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a male citizen of Zimbabwe born on 8<sup>th</sup> February 1974. The Appellant arrived in the UK on 23<sup>rd</sup> December 2000 when he was given

leave to enter as a visitor for a period of six months. He did not embark, and after various convictions for criminal offences he left the UK some time in 2006 or 2007. The Appellant returned to the UK illegally on 14<sup>th</sup> September 2007 and after various further convictions for criminal offences and unsuccessful asylum applications, eventually and on 30<sup>th</sup> March 2011 the Appellant was convicted at Leeds Crown Court of offences of deception and sentenced to two years' imprisonment. As a consequence, the Appellant was served with a decision to make a deportation order against him. The Appellant made a further application for asylum but that was refused for the reasons given in the Respondent's letter of 15<sup>th</sup> August 2016 when it was decided to maintain the decision to deport him. The Appellant appealed, and his appeal was heard by First-tier Tribunal Judge Lodge (the Judge) sitting at Birmingham on 27<sup>th</sup> April 2017. He decided to allow the appeal on human rights grounds for the reasons given in his Decision of 1<sup>st</sup> May 2017. The Respondent sought leave to appeal that decision and on 24<sup>th</sup> May 2017 such permission was granted.

### **Error of Law**

2. I must first decide if the decision of the Judge contained a material error on a point of law so that it should be set aside.
3. The Judge allowed the appeal under the provisions of paragraph 399(a) of HC 395 on the basis of the Appellant's relationship with his children [C1] and [C2]. Particularly in the case of [C2], the Judge found that it would be unreasonable to expect him to leave the UK with his father, and that it would be contrary to his best interests and unduly harsh for [C2] to remain in the UK without his father.
4. At the hearing, Mrs Aboni referred to the grounds of application and argued that the Judge had erred in law in coming to this conclusion. The Judge failed to give adequate reasons for his decision. The only evidence of the effect upon [C2] of his father's departure was that given by the Appellant. The report of the Social Worker provided little supporting evidence. The fact of the matter was that [C2] lived with his mother and not his father. The Judge failed to identify factors which outweighed the public interest.
5. I indicated to Ms Shaw that I did not need to hear from her. I find no material error of law in the decision of the Judge and I am satisfied that he gave sufficient reasons for his decision. The Judge demonstrated that he had carried out the balancing exercise necessary for any assessment of proportionality. He acknowledged at paragraph 38 of the Decision that the Appellant had a long history of criminal offending. At paragraph 35, the Judge attached due weight to the public interest which weighs heavily in cases involving the deportation of foreign criminals. The Judge was aware that the Appellant's children did not live with him, but found at paragraph 31 that he cared for his two children. The Judge analysed that relationship carefully and found that the Appellant's absence would have a detrimental psychological effect upon [C1], and a "devastating impact" on

[C2]. It is not true to say that there was little or no evidence in support of this finding apart from that from the Appellant. There was before the Judge a report from a Social Worker named Rukhsana Farooqi which contained emphatic evidence that it would not be in the best interest of either child for the Appellant to be deported. I therefore conclude that the Judge came to a conclusion open to him on the evidence before him and which he fully explained. There was no misdirection at law. For these reasons I find no error of law in the decision of the Judge.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

### **Anonymity**

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed

Date 25<sup>th</sup> August 2017

Deputy Upper Tribunal Judge Renton