



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/02028/2016

**THE IMMIGRATION ACTS**

Heard at Manchester  
on 15 February 2018

Decision Reasons promulgated  
on 21 February 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ORA  
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Khan instructed by Manchester Associates  
For the Respondent: Mr Harrison Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal.
2. The respondent, in her Rule 24 response, dated the 30 October 2017, confirms she does not oppose the appellant's application and invites the tribunal to determine the appeal fresh on the basis it is clear section 117B(6) was not addressed by the First-tier Tribunal.

3. The Upper Tribunal therefore sets aside the decision of the First-tier Tribunal.

### Discussion

4. The appellant is a national of Nigeria born on 21 November 1974. At [31] of the decision under challenge the First-tier Tribunal records that the Secretary of State concedes that the appellant and his wife are in a genuine and subsisting relationship, that they have a son together, and that the appellant has a genuine and subsisting relationship with his son. It is also recorded, as conceded, that the appellant has a genuine and subsisting relationship with his stepdaughters.
5. Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 states:

“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 be unreasonable to expect the child to leave the United Kingdom.
6. The appellant’s son and his stepdaughters are British citizens. It is the appellants evidence that as his wife is in full-time employment all the children are reliant upon him for their daily care before and after school.
7. The stepdaughters are stated to be ten and eleven years of age respectively and to have lived in the United Kingdom since birth. His son is 3 ½ years old and has also lived in United Kingdom since birth. None of the children have travelled to or lived in Nigeria.
8. In *Treebhawon and others* (section 117B(6)) [2015] UKUT 674 (IAC) it was held that (i) Section 117B (6) is a reflection of the distinction which Parliament has chosen to make between persons who are, and who are not, liable to deportation. In any case where the conditions enshrined in section 117B(6) of the Nationality, Immigration and Asylum Act 2002 are satisfied, the section 117B(6) public interest prevails over the public interests identified in section 117B (1)-(3): (ii) Section 117B (4) and (5) are not parliamentary prescriptions of the public interest. Rather, they operate as instructions to courts and tribunals to be applied in cases where the balancing exercise is being conducted in order to determine proportionality under Article 8 ECHR, in cases where either of the factors which they identify arises.
9. By virtue of section 117D a “qualifying child” means a person who is under the age of 18 and who – (a) is a British citizen, or (b) has lived in the United Kingdom for a continuous period of seven years or more. If a child is a qualifying child for the purposes of section 117B of the 2002 Act as amended, the issue will generally be whether it is not reasonable for that child to return.
10. The IDIs on Family Migration, Paragraph 11.2.3, which deals with British children (August 2015 version) states that, save in cases involving criminality, the decision

maker must not take a decision in relation to the parent or primary carer of a British Citizen child where the effect of that decision would be to force that British child to leave the EU, regardless of the age of that child. However, it also states that "where a decision to refuse the application would require a parent or primary carer to return to a country outside the EU, the case must always be assessed on the basis that it would be unreasonable to expect a British Citizen child to leave the EU with that parent or primary carer". The section goes on to address the grant of leave to the parent indicating that it may not be appropriate if there is no satisfactory evidence of a genuine and subsisting parental relationship or where the conduct of the parent or primary carer gives rise to considerations of such weight as to justify separation but none of that gets round the unequivocal statement that it would always be unreasonable to expect a British child to leave the EU.

11. The countervailing factors in this case are said to be the appellant's poor immigration history which I find is not the determinative issue.
12. Having considered the competing arguments, I find that in light of the ability of the appellant to satisfy 117B(6)(a) and (b) the appeal must be allowed.

**Decision**

13. **The Immigration Judge materially erred in law. I set aside the decision of the original Immigration Judge. I remake the decision as follows. This appeal is allowed.**

Anonymity.

14. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Judge of the Upper Tribunal Hanson

Dated the 15 February 2018