



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04516/2016

THE IMMIGRATION ACTS

Heard at Field House
On 8th March 2018
And determined on the papers
on 23rd March 2018

Promulgated
On 27 March 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

OLUWASEUN ADENIYI IDOWU

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation on 8th March 2018:

For the Appellant: Ms Grace Brown instructed by Michael Stevens Solicitors

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a Nigerian citizen, date of birth 7th November 1982 who first arrived in the UK on 20 August 2011. For reasons set out in a decision of First-tier Tribunal Judge Broe his appeal against the refusal of his human rights claim was dismissed on 11 May 2017. Before me on 8th March 2018, Mr Deller accepted that the First-tier Tribunal judge had erred in law in failing to give any or any adequate consideration to the fact that the appellant has a genuine and subsisting relationship with a British Citizen child with whom he lives with his

partner. The judge did not factor into his consideration the citizenship of the child and the respondent's policy on British Citizen children who would be affected by the removal of one parent with whom they lived.

2. I set aside the decision to be remade.
3. At its highest this appellant has committed deception by obtaining and relying upon a fraudulent ETS certificate in an earlier application for leave to remain in the UK. The appellant denies this deception and has been trying to obtain from the respondent (so far unsuccessfully) the necessary disclosure to enable him to carry out appropriate tests. Even if the appellant has perpetrated deception, the issue remains whether that action by him is sufficient, given the context of his close, genuine and subsisting relationship with his wife and (now) two British citizen children, to mean that the decision to refuse his human rights claim is proportionate.
4. Mr Deller suggested, and this was agreed to by Ms Brown, that the appropriate course of action would be for the remaking of the appeal be adjourned.
5. I adjourned the hearing.
6. On 22nd March 2018 Mr Deller informed me by email that

“...I have decided that the Secretary of State wishes to **withdraw her case**. Irrespective of the still inchoate question of whether Mr Idowu was party to the fraudulent obtaining of an ETS certificate, the weight to be given to such conduct if shown could not in my view outweigh his relationships with his children. That is not of course to condone such behaviour where demonstrated, but our current policy would not warrant expecting Mr Idowu to leave in his individual circumstances and thus there seems no need to continue with the case.

....I have been in touch with the solicitors who have given a preliminary indication that they are content with things being summarily concluded before I send the case for a grant of leave to remain....”

7. The withdrawal of her case by the respondent is a withdrawal of her opposition to the appellant's appeal.
8. In the light of the email from Mr Deller I take the view this appeal can be determined on the papers before me. I remake the decision in the appeal and allow it.

Conclusion

9. There is an error of law in the decision by the First-tier Tribunal and I set aside the decision to be remade.
10. I remake the decision by allowing the human rights claim appeal.



Upper Tribunal Judge Coker

23rd March 2018