Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/12098/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision &Reasons Promulgated**
On 26 September 2018	**On 13 November 2018**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GUIGUI [N]
(No anonymity order made)

Respondent

Representation:
For the Appellant: Mr Lindsay, Home Office Presenting Officer
For the Respondent: Mr Mitchell of Notre Dame Refugee Centre

DECISION AND REASONS

1. For convenience I retain the designations as they were before the First-tier Tribunal, thus Mr [N] is the appellant and the Secretary of State the respondent.

2. The appellant is a citizen of Ivory Coast born in 1979. He made application on 15 January 2016 for leave to remain on the basis of his family life in the UK. This was refused on 26 April 2016.

3. The basis of the refusal was that he could not meet the requirements of the Immigration Rules under the partner route. It was not accepted that his claimed relationship was genuine and subsisting. Further, his children, born in 2007 and 2012 are not British citizens. As for private life he had arrived in 2002 with leave as a student until 2004 then overstayed. A claim for asylum made in 2010 was refused later that year. It was considered that there were no very significant obstacles to his integration in his home country. It was further considered that there were no exceptional circumstances meriting a grant of leave outside the Rules.

4. He appealed.

First tier hearing

5. Following a hearing at Taylor House on 4 October 2017 Judge of the First-tier Mitchell allowed the appeal.

6. His findings are at paragraph 11ff of his decision. Having heard oral evidence from the appellant and witnesses he found that the children lived with their mother, the appellant's ex-partner. All three are citizens of Ivory Coast and they have limited leave to remain which was granted in September 2015 valid until March 2018. He added:

> *"It seems probable that this leave was granted as one of the children had lived in the United Kingdom continuously for seven years at that time. Neither the appellant's ex-partner nor the children are British citizens. There is no reason to doubt that the children have limited leave to remain in the United Kingdom."*

7. He found that the appellant does not live with his ex-partner (who did not attend the hearing). However, the appellant has an *"ongoing parental role with the children as he sees them on a daily basis taking them to school and collecting them from school and spending time with them at the weekend."*

8. The judge, having noted that it was not submitted that the appellant could satisfy the Rules and that the appeal was solely Article 8 outside the Rules, went on in the proportionality assessment to find that the *"best interests of the children would be to maintain contact with the appellant as he is a significant part of their lives and has been so throughout the whole of their lives. The children have limited leave to remain in the United Kingdom and although they are not British citizens it is likely they will be able to remain in the United Kingdom for the foreseeable future".* Another factor in his favour was the *"significant"* length of time he has been here and the fact that no attempt had been made to remove him despite removal action having been instigated in 2010.

9. The respondent sought permission to appeal which was refused. However, it was granted on 21 August 2018 on reapplication to the Upper Tribunal.

Error of law hearing

10. The grounds are brief, a single point, namely, that the judge had been wrong to assume that the children had been granted status on account of their long residence. Home Office records indicated that the ex-partner was granted discretionary leave, and the children in line, based on her claim to being the sole carer for her children. Since the appellant submitted his own application claiming to share responsibility her leave had been curtailed. She and the children are currently without status. Thus, the argument that the appellant should be given leave in order to maintain contact with his children falls away as he, his ex-partner and the children could return to Ivory Coast as a family unit.

11. I pointed out to Mr Lindsay that the respondent had chosen not to be represented at the First-tier hearing and there was nothing before the judge from the Home Office giving that information. He was not able to address me on how on the evidence before him the judge had erred. The fact that the respondent may have curtailed the mother's leave on, I was told by Mr Lindsay, 25 April 2016 does not mean that the judge's decision at the time of the First tier hearing was flawed. The judge gave reasons for allowing the appeal and on the facts presented his findings and conclusions were open to him.

12. For the sake of completeness I was told by Mr Mitchell, and it was not disputed by Mr Lindsay, that the mother was subsequently granted leave again on 19 July 2018 until 2021, the younger child the same, and the older child was granted British citizenship on 4 June 2018.

Notice of Decision

13. The decision of the First tier Tribunal shows no material error of law and that decision allowing the appeal shall stand.

Signed Date 5 November 2018

Upper Tribunal Judge Conway