Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/24841/2016

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
on 27 February 2018	**on 9 March 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

OLUSEGUN [A]
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Atuegbe.
For the Respondent: Mr McVeety Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Lloyd-Smith, promulgated on 11 October 2017, in which the Judge dismissed the appellant's appeal against the respondent's refusal of an application for leave to remain as the parent of a child.

Background

2. The appellant, a national of Nigeria, was born on 23 September 1973. The Judge assessed the application before setting out findings of fact from [12] of the decision under challenge. The Judge was not satisfied on the evidence that the appellant had been truthful and states there are reasons to doubt the relationship between the appellant and Mrs [A] is as claimed.
3. The appellant sought permission to appeal asserting the Judge misunderstood the oral evidence and did not have regard to some of the documentary evidence, for example letters from [F]'s school and copies of bus tickets, as a result of which he fell into error in making findings of fact which affected consideration of the legal issues. The Judge granting permission considered this to be a borderline case but found there was some substance in the grounds.
4. The respondent's Rule 24 response submits the grounds are little more than an attempt to reargue the matter and the grounds fail to identify actual errors in law instead focusing on their view of the evidence.
5. For this reason, it was necessary to invite Mr Atuegbe to set out clearly, by reference to cases such as R (Iran) the exact nature of the legal errors he was submitting the Judge had made. These were broken down into four main headings being (a) error of fact, (b) a lack of findings in relation to section 117B, (c) a failure to consider the evidence and (d) that the Judge had speculated contrary to the evidence.
6. No arguable merit in the assertion the Judge had made an error of fact material to the decision to dismiss the appeal was made out in Mr Atuegbe's submissions. The Judge made findings in relation to section 117B when considering the proportionality of the decision and the submission the Judge had speculated in a manner sufficient to amount to material legal error was not made out. Accordingly, the only point upon which Mr McVeety was invited to reply was that relating to the alleged failure of the Judge to consider the evidence which included the evidence from the school or GP material.
7. The decision under challenge records at [18] a reference to the refusal letter criticising the lack of evidence relating to the appellant's relationship with his daughter [F], the only documents submitted being a letter from her school and GP. The Judge notes in the appellants bundle there are some photographs of the appellant with some children but little else and that the letters of support did not refer to the appellant's parenting. The letter from the children's mother made no reference to the appellant being the father and a further witness describes the appellant as being "helpful to me, to the people around him and his family" but does not refer to the appellant with his children. The Judge records the mother's oral evidence and the fact it was clear she felt abandoned by the appellant when he left her in Scotland but that she had facilitated some contact; although the evidence gave the impression that the relationship is still not stable

and implied they do not reside together. The Judge did not find that evidence gave an impression of a devoted father who was integral to his children's lives. The Judge therefore took into account the evidence that had been provided.

8. The Judge at [16] notes there is a DNA report which confirms the appellant is the father of the child [F] although the birth certificate does not record that the appellant is her father. In relation to a second child, Sean, his registration of birth does not name the appellant as the father and the evidence of both the appellant and his wife was that they did not know who the child's father is because she was in another relationship at the time. The Judge noted there was no DNA evidence confirming the child's paternity. In relation to a third child, Divina, the birth certificate does include the appellant's name as the father and there is no DNA evidence as the appellant claimed he could not afford to meet the cost of testing.
9. The fact DNA evidence exists for one child does not necessarily establish a genuine and subsisting relationship in the same way a lack of DNA does not establish such a relationship does not exist.
10. The Judge clearly took into account all the evidence provided and considered the same with the required degree of anxious scrutiny. The Judge took into account the oral evidence that was given before concluding it had not been made out the appellant was in a genuine and subsisting relationship and so could not satisfy section 117B(6). At [32] the Judge finds "on the evidence before me I am not satisfied that the appellant meets 117B(6) because I do not find that he has a genuine and subsisting relationship with [F]".
11. The Judge considered the best interests of the children but concluded that these will be met by remaining with their primary carer, their mother.
12. At [30] the Judge finds that if the children's mother is committed to the appellant as a partner she has the option of continuing to live as a family unit with the appellant and the children in Nigeria, a country she too originates from. There is no suggestion that the children should be removed from the United Kingdom as the first at least is a British citizen but rather that this is an option open to the children's mother if she wishes to exercise the same.
13. Having considered the grounds of challenge, submissions made, evidence and decision as a whole, I find there is arguable merit in the assertion the grounds are, in reality, no more than a disagreement with the findings of the Judge and disagreement with the weight the Judge attached to the evidence. In this respect weight is a matter for the Judge and it has not been shown that the conclusions are arguably perverse, irrational, or outside the range of findings reasonably open to the Judge on the evidence. It is clearly a case in which it was found the public interest outweighs the appellant's argument. The conclusion the respondent's decision is proportionate is an arguably sustainable decision on the facts of this case.
14. No arguable legal error is made out sufficient to warrant this tribunal interfering with this decision.

Decision

15. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

16. 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.....
Upper Tribunal Hanson

Dated the 8 March 2018