Upper Tribunal
(Immigration and Asylum Chamber) Appeal No: HU/22734/2016

THE IMMIGRATION ACTS

Heard at Glasgow	Decision and Reasons Promulgated
On 21 December 2018	On 15 January 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

HUMPHREY [C]
(anonymity direction not made)

Appellant

and

ENTRY CLEARANCE OFFICER, Nigeria

Respondent

For the Appellant: Mr M Ross, of Ethnic Minorities Law Centre, Glasgow
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant has permission to appeal against a decision by Designated FtT Judge Murray, promulgated on 28 December 2017, dismissing his appeal on human rights grounds against refusal of entry clearance.

2. Ground 1 is taking account of an irrelevant factor, the provisions of appendix FM of the immigration rules, which could not apply, as the appellant's wife has only limited leave to remain in the UK.

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3. Ground 2 is error in assessing the best interests of the 4 children of the appellant and sponsor, specified in 3 sub-paragraphs:

   (i) failure to recognise that the presence of 2 of the children in the UK for over 7 years is a very weighty factor;

   (ii) unclear findings at [34] on whether the starting point is that it is in the best interests of the children to be in the UK or in Nigeria; "although the FtT took account of the best interests of the children, the ground focuses on how the best interests have been assessed";

   (iii) inadequacy of reasoning, because if it was in the best interests of the children to remain in the UK, it would be disproportionate not to admit the appellant.

4. Mr Ross adopted the grounds, and said that the FtT failed to take account of a report by Dr Boyle, Chartered Psychologist, and of the need to take account of the views of the children; there were comprehensive reasons to set aside the decision; and the case should be remitted for rehearing. Replying to the submissions for the respondent, he said that the best interests of the children were paramount; if considered properly, the appeal should have been allowed; in principle, children should have direct contact with both parents; and communications by *skype* and similar methods were no substitute.

5. Having considered also the submissions for the respondent, I am not persuaded that the appellant has shown that the decision of the FtT involved the making of any error on a point of law, such that it ought to be set aside.

6. The FtT began with the extent to which the appellant met the requirements of appendix FM of the immigration rules. It would have been an error to start anywhere else. Ground 1 is not well founded.

7. The judge recognised at [24], and elsewhere, that 2 of the children have been here for over 7 years. The weight to be given to that factor was, within reason, up to her. Ground 2 (i) is only insistence that it should have carried the day.

8. Ground 2 (ii) is at best a complaint about form, not substance. The FtT found at [31] that the children were managing well without the appellant in the UK, but their best interests would be served by being in Nigeria with both parents. No error has been suggested in the finding that there was nothing in the allegations about difficulties over living in Nigeria.

9. Ground 2 (iii) is only another way of insisting on the same point.

10. As Mr Govan submitted, the judge referred to the psychological report at [15] – [17] and [23]; there is no complaint of failure to take account of it in the grounds; and the submissions did not point to anything in the report which showed error in the judge's conclusions.

11. It is true that children should, so far as possible, have direct contact with both parents, and that *skype* is not an adequate substitute. However, that does not automatically overcome everything in the rules which may have the effect of separating parents from children. These points have little force where, as the respondent submitted, the separation is the choice of the parents, not an imposition by the SSHD.

12. The best interests of the children were correctly taken by the FtT to be a primary but not paramount consideration. That part of the submissions for the appellant went too far.

13. The appellant has shown no error of law in the conclusion that he did not have a right to enter the UK, other than through compliance with the immigration rules. The FtT's decision shall stand.

14. No anonymity direction has been requested or made.

Dated 21 December 2018
Upper Tribunal Judge Macleman