Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/10829/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 May 2017	**On 26 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

OLUWASEYI KAYODE DISU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan of Counsel instructed by AA & Co, solicitors
For the Respondent: Mr K Norton of the Specialist Appeals Team

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Nigeria born on 8 November 1976. On 28 May 2008 he arrived with entry clearance as a work permit holder. He next made two applications, in March and December 2012, for a Residence Card as the husband of Marie Gesser, said to be a Dutch national

exercising Treaty rights here. Both applications were refused by the Respondent. On 23 February 2015 he made application through his solicitors for limited leave based on his private and family life with Ms Okumagba, a Nigerian national and their two children protected by Article 8 of the European Convention.

The Respondent's decision

2. On 26 February 2015 the Respondent refused the application because she considered the Appellant did not meet the time critical requirements of paragraph 276ADE(1) of the Immigration Rules and did not accept that his relationship with Ms Okunagba was genuine and subsisting. Further, the Respondent considered the Appellant had not shown he had sole parental responsibility for his two pre-school age children. She found there were no very significant obstacles to the re-integration of the Appellant in Nigeria where he had spent the majority of his life and that taking account of the best interests of his children it would still be reasonable to expect him to return to Nigeria.

3. On 18 March 2015 he lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended. He asserted he had access rights and parental responsibility for the children and had been fulfilling his financial responsibilities towards them and was still in a relationship with Ms Okumagba. On return to Nigeria he would be destitute.

The First-tier Tribunal Proceedings

4. By a decision promulgated on 22 August 2016 Judge of the First-tier Tribunal Moxon dismissed the appeal on all grounds. The Appellant sought permission to appeal on the basis that the Judge had erred in not finding him credible and had not given adequate reasons for his conclusions including the conclusion that the Appellant and his partner did not live together and had contact with his children.

5. On 14 December 2016 Judge of the First-tier Tribunal Grimmett refused permission on all grounds. The application for permission to appeal was renewed to the Upper Tribunal although the grounds are limited to disagreeing with the decision of Judge Grimmett. On 20 February 2017 Upper Tribunal Judge Bruce granted permission on because the finding of Judge Moxon that there was no evidence the Appellant was active in his children's lives was arguably not adequately reconciled with the clear terms of the Child Arrangements Order made on 5 August 2015 by District Judge MacGregor.

The Upper Tribunal Hearing

6. The Appellant and Ms Okumagba were present. I explained the purpose of and procedure for an "Error of Law" hearing.

7. Mr Norton informed me that the Respondent had revoked Ms Okumagba's Residence Card issued under Regulation 7 of the Immigration (EEA) Regulations 2006 and that she had lodged notice of appeal on 14 February 2017 against that decision and the appeal had been allocated the Tribunal reference EA/01775/2017.

8. The Judge had adequately dealt with the issue of the Child Arrangements Order of 5 August 2015 (CAO) and referred me to paragraphs 12 and 33-35. He was entitled to reach the conclusions contained in paragraph 39 and there was no material error of law in his decision.

9. For the Appellant, Mr Khan submitted that paragraphs 34 and 35 of the Judge's decision were inconsistent with the evidence contained in the Appellant's statement and in the letter of 10 August 2015 from the solicitors for the younger child at pages 8 and 9 of the Appellant's supplementary bundle filed on 15 August 2016. The Judge's conclusion was unreasonable when set against the making of the CAO and which the Judge had not mentioned at paragraphs 33-35 of his decision. Mr Khan continued that the CAO was evidence of the Appellant's involvement in the lives of his children and of the evidence which would have been before Judge MacGregor about the Appellant's involvement which would have enabled him to make the CAO.

10. In response, Mr Norton submitted that Judge Moxon had kept the CAO in mind in the course of reaching his decision, as evidenced by the various references to it in his decision. It should be noted that the CAO was made by consent so there was no need for the Family Court to embark on a fact-finding exercise. The making of the CAO had not been opposed by the local authority or any other person with an interest in the children. The First-tier Tribunal had conducted a fact-finding exercise and the Judge had reached his conclusions for sustainable reasons. The Appellant would need to show the Judge's reasons were irrational and he had failed to do so.

11. Mr Khan mentioned that the children had been taken back into care in October 2015 but he did not know when they had been returned to the mother. The presence of the Appellant and the mother together at the hearing showed their relationship was subsisting. The Judge had erred in law and his decision should be set aside.

Findings and Consideration

12. From the information in the Tribunal file the following chronology appears:-

November 2014-early 2015	The children are in care
23 February 2015	The Appellant makes his human rights claim
26 February 2015	The Respondent refuses the claim and makes the decision under appeal

30 July 2015	The Appellant and his partner enter into a Parental Responsibility Agreement in relation to their younger child
5 August 2015	The Family Court makes the CAO by consent
17 August 2016	The hearing before the First-tier Tribunal (IAC)
About October 2016	The children are taken back into care
At some subsequent date before 9 May 2017	The children are returned to their mother

13. Other than the witness statements before the First-tier Tribunal, the Family Court Orders, including the CAO, and a social worker's report referred to by the Judge and any oral testimony, there was little, if any, evidence of contact between the Appellant and his children or of the Appellant's financial support of his children put before Judge Moxon. At the start of the hearing before me, I did enquire of Mr Khan whether there was any documentary evidence which the Appellant wished me to consider. He said there was none.

14. Judge Moxon made several references to the CAO as well as the Parental Responsibility Agreement of 30 July 2015. He gave sustainable reasons for finding the Appellant had failed to discharge the burden of proof to show he had continuing contact with the children and was supporting them. No explanation for the absence of any such evidence before the First-tier Tribunal or before the Upper Tribunal was proffered at the hearing before me.

15. I do not consider that a consent CAO is itself evidence of the Appellant's contact with and involvement in the lives of his children. It is merely evidence that the Family Court has made an order providing for the legal possibility of contact.

16. I am not satisfied that full or even adequate disclosure of the circumstances of the children has been made to the First-tier Tribunal or to the Upper Tribunal.

17. The Appellant has not shown that the Judge's reasoning was irrational or inadequate. Consequently I conclude the First-tier Tribunal decision does not contain any material error of law and should stand.

18. I am concerned about the position of the children and note that their interests will inevitably feature largely in the appeal which their mother has lodged with the First-tier Tribunal. Doubtless, the Appellant will wish to give evidence in that appeal.

Anonymity

19. There was no application for an anonymity direction or order. The details of the children have been kept sufficiently vague in this decision such that I see no need for any further degree of anonymity or for anonymisation.

SUMMARY OF DECISION

The decision of the First-tier Tribunal did not contain a material error of law and shall stand. The appeal of the Appellant is dismissed.

No anonymity order.

Signed/Official Crest Date 11. v. 2017

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal