



**The Upper Tribunal
(Immigration and Asylum Chamber)
IA/00129/2014**

Appeal number:

THE IMMIGRATION ACTS

**Heard at Field House
On December 5, 2014**

**Promulgated
On December 8, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR MOHAMED MALIKE MANSARAY
(NO ANONYMITY DIRECTION MADE)**

**Appellant
and**

A

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Re

Representation:

For the Appellant: Mr Shaw, Counsel, instructed by Forward
and Yussuf Solicitors

For the Respondent: Mr Walker (Home Office Presenting
Officer)

DETERMINATION AND REASONS

1. The appellant, born November 29, 1975 is a citizen of Sierra Leone. On October 1, 2006 the appellant arrived in the United Kingdom in possession of an entry clearance visa as a spouse valid until September 22, 2008. He applied for indefinite leave to remain but this was refused, as was his application on March 12, 2010 for access to a child. However, he was granted discretionary leave to remain for the period October

1, 2010 and September 30, 2013. On September 5, 2013 he applied for further discretionary leave but the respondent refused this application on December 6, 2013.

2. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on December 18, 2013. On August 1, 2014 Judge of the First Tier Tribunal Hussain (hereinafter referred to as the "FtTJ") heard his appeal. He refused his appeal on human rights grounds in a determination promulgated on September 18, 2014.
3. The appellant lodged grounds of appeal on September 25, 2014 and on November 5, 2014 Judge of the First-tier Tribunal Osborne granted permission to appeal finding it arguable the FtTJ may have erred in his assessment of the appellant's family life and consideration of section 55 of the Borders, Citizenship and Immigration Act 2009.

ERROR OF LAW SUBMISSIONS

4. Miss Shaw relied on the grounds of appeal and submitted the FtTJ erred by failing to find the appellant had private life with his "partner" and his two children. He also erred by failing to have regard to the best interests of the children. In paragraph [54] of his determination the FtTJ found the appellant did not have family life and this was despite one of his children attending the hearing and evidence being given that the appellant had regular contact to the child. At no time does the FtTJ refer to section 55 of the 2009 Act and this should have been at the forefront of his thinking in light of the fact the appellant had two children both of whom are British citizens. The FtTJ was aware also of the fact his current "partner" was expecting their child and that that child would also be British.
5. Mr Walker relied on the Rule 24 response and submitted that whilst the FtTJ did not refer to Section 55 of the 2009 Act he had made clear findings on the evidence that involved him considering the best interests of the children. At paragraphs [32], [42] and [43] he outlined his concerns about the children and why he found there was no family life. All findings were open to him.

DISCUSSION AND ERROR OF LAW ASSESSMENT

6. In considering this application I raised with Miss Shaw the following issues:
 - a. Whether she agreed that at the date of hearing the appellant had not seen his eldest son since 2013?

- b. Whether she agreed the FtTJ was entitled to come to the findings he did about the relationship between the appellant and his “partner”.
7. Miss Smith conceded:
 - a. At the date of hearing the appellant was not having contact with the child from his marriage although he did make small payments into an account for him.
 - b. The findings about the appellant’s current relationship were open to him.
8. I am satisfied the FtTJ was entitled to reach the findings he did in relation to the eldest child and the “partner” in so far as family life was concerned.
9. The FtTJ clearly considered the eldest child at paragraph [40] of his determination and he recorded the appellant had not had contact with his child since at least 2013. The mother of that child was refusing him contact and there was no evidence before the FtTJ of any steps to alter this situation. The facts therefore spoke for themselves and the FtTJ was entitled to make the findings he did.
10. The FtTJ also considered whether there was family life between the appellant and his “partner” from paragraph [47] onwards. As Miss Shaw fairly conceded the FtTJ was entitled to make the findings he did because he did not accept the appellant’s claims about the relationship. Although he accepted the “partner” was pregnant he rejected their claims about them not living together and their claims they were not together for religious reasons especially in light of the fact the “partner’s” religion did not permit children outside of marriage and she was now expecting their child and she had another child outside of marriage as well. The FtTJ’s findings on this were open to him.
11. The remaining areas that I had to consider related to the appellant’s second child and his “partner’s” child.
12. The FtTJ heard oral evidence about both. From paragraph [42] of his determination he considered the relationship and the oral evidence. The FtTJ also recorded that this child had been living in Africa until June 2014 and he had grave concerns about what he was being told. His adverse findings can be found in paragraph [43] and [44] of his determination.
13. Miss Shaw referred me to the decision of JO and Others (section 55 duty) Nigeria [2014] UKUT 00517 (IAC) but she

accepted that this decision related to the approach by the respondent and not the FtTJ.

14. I have to consider whether the appellant considered the best interests of the child. The FtTJ heard the oral evidence and considered the written evidence and made a negative finding about the relationship. Although the child was in attendance at the hearing the FtTJ was not persuaded by what he was told. That child lives with his mother and the FtTJ was not satisfied with what he was told and the decision he made on family life was open to him.
15. Miss Shaw did not push the issue of the “partner’s” other child and I am satisfied that based on the findings there was no error in the FtTJ’s assessment.
16. The appellant’s situation is constantly changing, as his “partner” is due to give birth to his third child and will also be British. These are not matters that concerned the FtTJ and no error flows from that decision.
17. In summary, the FtTJ did consider the children. They formed an essential part of his decision and he made findings that ultimately led to him concluding there was no family life. On the evidence these findings were open to him.

DECISION

18. There was no material error of law. I dismiss the appeal.
19. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis



TO THE RESPONDENT

The appeal was dismissed so no fee is payable.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis