



IAC-FH-AR-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/05429/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 January 2016**

**Decision & Reasons Promulgated  
On 10 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**MALCOLM LLOYD CLARKE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms B Minhoo, Solicitor, Kulendran Immigration Law Centre  
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant's appeal against a decision to remove him from the United Kingdom was dismissed by First-tier Tribunal Judge Symes ("the judge") in a decision promulgated on 7 August 2015. The appellant's case was advanced on the basis that his removal would breach his Article 8 rights, in the light of family ties he claimed with his children here. It appears that he has five in all, two of them under the age of 16. All the children are British citizens.

2. The judge found that the requirements of the Immigration Rules (“the rules”) were not met in relation to family life. He concluded that the appellant did not meet the requirement of paragraph E-LTRPT.2.5 as the evidence did not show that he was taking and intended to continue to take an active role in his children’s upbringing. He also found that the private life requirements of the rules were not met. Towards the end of his decision, the judge went on to consider whether the decision to remove the appellant breached his Article 8 rights (or those of others) and took into account section 117B of the 2002 Act, in considering “the public interest question”. Overall, he concluded that removal would not be disproportionate and so he dismissed the appeal.
3. In grounds in support of an application for permission to appeal, it was contended that the judge erred in failing to fully consider the appellant's relationships with his partner and children. Family members were at court and gave supporting evidence. The relationships were genuine and there was no proper consideration of the rules regarding children who had lived in the United Kingdom for more than seven years. The judge failed to make a best interests assessment in accordance with section 55 of the 2009 Act and failed to apply guidance given in ZH (Tanzania) [2011] UKSC 4.
4. Permission to appeal was granted on 26 November 2015 on the basis that the judge may have erred in failing to give sufficient reasons for finding that the relationships between the appellant and his children were not genuine. In a brief Rule 24 response, the Secretary of State contended that the judge made findings which were open to him and directed himself appropriately. He made a clear finding that the appellant had not shown that he took an active role in the children's upbringing and so it was difficult to see how any further assessment under section 55 of the 2009 Act was required or material.

### **Submissions on Error of Law**

5. Ms Minhoo said that the judge made a mistake in his decision in relation to the name of the appellant's representative. Mr V Kulendran of Kulendran Immigration Law Chambers appeared before the First-tier Tribunal, but another person’s name was shown. I observe that the Record of Proceedings does indeed show that Mr Kulendran appeared, whereas another’s name appears in the promulgated decision. Sensibly, Ms Minhoo did not seek to argue that this mistake revealed a material error of law.
6. Ms Minhoo drew attention to the Secretary of State's letter, giving reasons for the removal decision. At paragraph 20, mention was made of section 55 of the 2009 Act and the best interests of the appellant’s children. DNA evidence was made available to confirm that he was the father of the two youngest. In his decision, the judge failed to give adequate reasons for concluding that no genuine relationship with the appellant was shown. The appellant had been present in the children’s lives since 1999. No

section 55 assessment was made by the judge regarding these family members, each of them under the age of 16.

7. At paragraph 10 of the decision, the judge was rather imprecise about the evidence summarised in that paragraph. The appellant's recollection was that he was questioned by the two representatives and by the judge but there was no mention of this in the decision. There was correspondence before the Tribunal regarding the appellant's children but the judge did not give this sufficient weight. At paragraph 11 the judge reached his conclusion that the appellant had not shown a genuine relationship but without a section 55 assessment having been made and without regard to ZH (Tanzania). Again, the judge's findings at paragraph 12 were rather vague. The mother of the children was present at the hearing but she and the appellant felt that they were given no adequate opportunity to explain matters. Ms Minhoo accepted that the appellant was represented throughout.
8. It appeared that the judge based his adverse findings on the relationship between the appellant and the children's mother, with whom he did not live. However, the appellant lived with the children until 2003, when the youngest was born. The relationship between the adults then came to an end. Nonetheless, the appellant played and was able to continue to play an active part in the children's lives.
9. At paragraph 13 of the decision, the judge did not provide a summary of the questions he put to the appellant and so it was difficult to tell what emerged from them. There was no mention of section 55 of the 2009 Act and nothing dealing with the impact on the children of the appellant's removal, or indeed the impact on the appellant in this context.
10. Ms Pal said that the grounds amounted to a disagreement with the judge's conclusions and the findings of fact he made. At paragraph 11, the judge set out that he had taken into account the oral evidence and the witness statements. He was entitled to summarise the appellant's evidence as vague at paragraph 12 and again at paragraph 13 and gave adequate reasons for his findings. The judge concluded that no family life between the appellant and his children was shown. Having found no family life, there was no need for him to go further in relation to section 55 of the 2009 Act.
11. The judge was entitled to find that the appellant could not meet the requirements of the rules and that the removal decision was a proportionate response. There was no challenge in the grounds to the private life findings. The judge was not required to set out in any particular form the questions he put to the appellant. In any event, a request might have been made for sight of the Record of Proceedings or the appellant's representative might have produced a note of them. Overall, the judge properly weighed the evidence before him and the decision should stand.

12. In a brief reply, Ms Minhoo said that the Tribunal was obliged to make a proper section 55 assessment but the judge failed to do so. The starting point was that a child was entitled to be brought up by both parents. The two youngest children were under the age of 16.

### **Conclusions on Error of Law**

13. I am grateful to the two representatives for the careful way in which they put their cases. I conclude that no material error of law has been shown and that the decision should stand. Read overall, I find that the judge gave cogent and sustainable reasons for finding that the requirements of the rules were not met, in relation to family life and private life. He went on to make an Article 8 assessment more broadly, apparently outside the rules, but, again, no error of law has been shown in relation to the substantive analysis he made. The overall conclusion, regarding the rules and the lawfulness and proportionality of removal, was open to him on the evidence.
14. Ms Minhoo is correct in pointing to the absence of any express mention of section 55 of the 2009 Act. On the other hand, the summary of the evidence which appears at paragraphs 7 to 10 of the decision, and the judge's assessment at paragraphs 11 to 13, show that he was well aware of the circumstances of the children of the family. His key finding was that the appellant had not shown that he enjoyed a genuine relationship with the children, so that the requirement of paragraph E-LTRPT.2.4 was not met. In making this finding, the judge took into account the vagueness of the evidence before him, the brief witness statements in virtually identical form and the absence of any detail showing the frequency or quality of the appellant's involvement in the lives of his children. The judge concluded that the evidence did not show that his presence had a material impact on their upbringing. There was no supporting evidence from any external or independent source.
15. In the light of that assessment of the evidence, the judge was entitled to make the findings he did. I accept Ms Pal's submission that nothing further was required and the absence of any express mention of section 55 of the 2009 Act falls far short of showing a material error of law. Again, the judge did not overlook the circumstances of the children and the adverse finding regarding the absence of a genuine relationship which made any real difference to their lives undermined the appellant's family life case.
16. There has been no challenge to the private life findings. The judge was entitled to conclude that the requirements of the rules were not met in this context. He took into account the family relationships as components of the appellant's private life. In the proportionality assessment, the judge took into account section 117B of the 2002 Act, weighing the relevant factors in paragraph 17 of the decision.

17. The judge's analysis is consistent with guidance given by the Court of Appeal in AJ (India) [2011] EWCA Civ 1191 and the absence of any express mention of Section 55 of the 2009 Act does not amount to a material error of law. I conclude that the judge was entitled to make the adverse findings he did, in relation to the family life and private life ties claimed by the appellant. As no material error of law has been shown, the decision of the First-tier Tribunal shall stand.

**Decision**

18. The decision of the First-tier Tribunal shall stand.

**Anonymity**

19. There has been no application for anonymity and I make no direction.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell