Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/06967/2018**

THE IMMIGRATION ACTS

Heard at Field House
On 14 February 2019

Decision & Reasons Promulgated
On 19 February 2019
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Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

OLADIMEJI [A]
(No Anonymity Direction Made)

Appellant

and

SECREARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Coleman (counsel) Instructed by Paul John & Co
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Lucas promulgated on 30 October 2018, which dismissed the Appellant's appeal

Background

3. The Appellant was born on 14 April 1977 and is a national of Nigeria. On 6 March 2018 the Secretary of State refused the Appellant's application for leave to remain in the UK.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Lucas ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and, on 21 December 2018, Judge Birrell granted permission to appeal stating inter alia

> The Appellant claimed to be in a relationship with a lady who had a previous child who was a British Citizen and they also had a child together. There is no reference to or identification of the best interest of the children in the decision: while that may not have been material in respect of the second child who was neither a British citizen nor one who had lived in the UK for over 7 years it was clearly relevant in respect of the British citizen child who the Appellant and sponsor claimed had a relationship with his biological father.

The Hearing

5. Both Mr Coleman and Mr Wilding told me that the decision contains an error of law and, on joint motion, they asked me to set the decision aside and remit this case to the First-tier Tribunal for further fact-finding. Mr Coleman restricted himself to relying on the grounds of appeal. Mr Wilding told me that [21] of the decision is wrong, that the decision does not contain an adequate analysis of the evidence that was led, and that the Judge's findings are inadequately reasoned.

Analysis

6. At [3] of the decision the Judge summarises the areas of dispute in this case. After reading [3] one could realistically expect the decision to contain a discussion of the evidence relating to whether or not the appellant's relationship with his partner existed for two years; findings on whether that relationship is genuine and subsisting; findings about the relationship between the appellant and his stepdaughter. One of the issues that the Judge manifestly fails to take account of is and the appellant's stepdaughter is a British citizen.

7. In R (on the application of RK) (s.117B(6); "parental relationship") IJR [2016] UKUT 00031 it was held that (i) It is not necessary for an individual to have "parental responsibility" in law for there to exist a parental relationship; (ii) Whether a person who is not a biological parent is in a "parental relationship" with a child for the purposes of s.117B(6) of the Nationality, Immigration and Asylum Act 2002 depends on the individual circumstances and whether the role that individual plays establishes he or she has "stepped into the shoes" of a parent; (iii) Applying that

approach, apart from the situation of split families where relationships between parents have broken down and an actual or de facto step-parent exists, it will be unusual, but not impossible, for more than two individuals to have a "parental relationship" with a child. However, the relationships between a child and professional or voluntary carers or family friends are not "parental relationships".

8. The Judge's brief findings occupy just half a page between [17] and [23] of the decision. The appellant had lodged a bundle before the First-tier Tribunal which included a letter from his Minister of religion, a letter from his stepdaughter's school and three witness statements. The witness statements and letters contain evidence of the nature and quality of relationship with his partner, and the nature and quality of the relationship with his British Citizen stepdaughter.

9. The Judge's decision contains no meaningful analysis of the evidence that is produced. The first sentence of [21] is simply wrong. [20] stands in isolation. The Judge finds that there is no relationship between the appellant's British citizen stepdaughter and her biological father, but does not go on to make any findings at all about the relationship between the appellant and his stepdaughter.

10. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

11. The appellant's relationship with his British citizen stepdaughter is a central issue in this appeal, yet there is no consideration of section 117B(6) of the 2002 Act and no consideration of section 55 of the Borders Citizenship and Immigration Act 2009. There are no meaningful findings of fact about the relationship between the appellant and his British citizen stepdaughter.

12. Because the fact-finding exercise is incomplete, because the decision contains no meaningful analysis of relevant evidence lead for the appellant, because s.117B(6) of the 2002 Act has not been considered and because there is no consideration of s.55 of the Borders Citizenship and Immigration Act 2009, the decision is tainted by material errors of law. I set it aside. I consider whether I can substitute my own decision. The material error of law in the decision relates to an inadequacy of fact finding. I cannot substitute my own decision. A further fact-finding exercise is necessary.

Remittal to First-Tier Tribunal

13. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

14. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re-hearing is necessary.

15. I remit the matter to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge Lucas.

Decision

16. The decision of the First-tier Tribunal is tainted by material errors of law.

17. I set aside the Judge's decision promulgated on 30 October 2018. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed  Date 14 February 2019

Deputy Upper Tribunal Judge Doyle