



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

**Appeal Number: HU/15808/2017**

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice Centre  
On 14 September 2018**

**Determination & Reasons Promulgated  
On 01 October 2018**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**GODWIN CHIEMEZIE CHIEGE**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Timson, instructed by Knightbridge Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Mr Chiege was convicted of 13 counts of dishonestly making false statements/representations to make gain or cause loss and he was sentenced to 2 years and 6 months imprisonment. Pursuant to s32(5) UK Borders Act 2007 a deportation order was signed against him. The respondent also took the view that his deportation was conducive to the public good because he had a previous conviction for battery in January 2012 for which he received a community order.
2. His human rights claim was refused for reasons set out in a decision dated 27<sup>th</sup> October 2016 and his appeal against that decision was dismissed by First-tier Tribunal Judge Foudy, for reasons set out in her decision promulgated on 15<sup>th</sup> May 2018.

3. Permission to appeal that decision was sought and granted on the grounds that it was arguable that the judge had failed to consider whether the effect of Mr Chiege's deportation would be unduly harsh on his wife and children, failed to make express reference to s117C Nationality Immigration and Asylum Act 2002, failed to consider the children's best interests as a primary consideration and failed to make reference to the expert report from the social worker.
4. Although the respondent's Rule 24 response stated that he considered the decision did not show a material error of law, Mr McVeety acknowledged that there had been no reference to the social workers report and this was a matter that should have been considered by the judge.
5. I am satisfied the First-tier Tribunal judge erred in law in failing to have adequate or any regard to the social worker's report. I set aside the decision to be remade.

**Remaking the decision.**

6. Mr Timson submitted that the factual findings of the First-tier Tribunal judge were infected by Mr Chiege's criminality. There had been no challenge raised in the grounds of appeal to the findings of the First-tier Tribunal judge, the challenge was to the conclusions drawn from those findings in the context of the lack of consideration of the social work report. The findings as made by the First-tier Tribunal judge stand. I refused to remit the appeal to the First-tier Tribunal for hearing de-novo. There was no need for further oral evidence, there being no challenge to the evidence as recorded in the First-tier Tribunal decision and no indication that further oral evidence was necessary.
7. I heard submissions from both parties.
8. The appellant arrived in the UK on 2<sup>nd</sup> February and was granted leave to enter as a student, visa valid until 31 October 2009. On 20 December 2008 he married Ms B and his leave to remain was varied such that he was granted leave to remain as a spouse until 30 March 2011. He was granted indefinite leave to remain on 5 September 2011. The couple have two children born 21 January 2009 and 29 December 2012; his wife has an older child born February 2003 from an earlier relationship who is part of the family unit. She has no contact with her birth father.
9. On 17 July 2015 Mr Chiege was convicted, following a plea of guilty, to 13 counts of dishonestly making false representations to make gain for self/another or cause loss to other/expose other to risk and, on 23 September 2015 was sentenced to a total of 2 years and 6 months imprisonment. A deportation order was signed on 27 October 2016.
10. The retained findings are as follows:
  - The appellant's wife was convicted of handling stolen goods as her part in the criminal activity.

- Mr Chiege lied when he told the First-tier Tribunal judge that he was not in contact with his mother, brothers and sisters in Nigeria; he is in almost daily contact with his family there.
- That his wife “probably” was forced to participate in Mr Chiege’s fraudulent business.
- His wife is a registered carer for her mother who is suffering from breast cancer; her sister suffers from cerebral palsy and is unable to assist with their mother.
- Mr Chiege has lived with the older child since she was small and with his birth children since they were born, save when he was in prison.
- The children visited him in prison and do not want him deported.
- The children are old enough to participate in telephone and internet contact.
- The children are all British Citizens, as is his wife.
- The best interest of the children lie with the family unit remaining together.
- The family are a close family.
- It would be unduly harsh for the children and Mrs Chiege to relocate to Nigeria.

11. In the course of his sentencing remarks, the judge said

“...[the fraud] in actual fact is and it was vast.

...

I agree Mr Chiege that you are of ‘high culpability; you are a leading role; you involved others; it was sophisticated and there were large numbers of victims. I’m not sure you coerced your wife into it; there are certainly antecedents that suggest that part of your history is one of domestic violence, but I have a head on factual clash between two defendants as to whether or not there was coercion and I’m not prepared to make a finding”

12. The sentence passed upon Mr Chiege brings him within s117C Nationality Immigration and Asylum Act 2002 when considering his human rights claim. The public interest requires his deportation unless Exception 1 or Exception 2 applies. Exception 1 does not apply – he has not been lawfully resident in the UK for most of his life and there are no significant obstacles to his reintegration to Nigeria.

13. It is plain that he has a genuine and subsisting relationship with his wife and the three children. Letters from the children in the bundle describe the emotional upset they faced whilst he was in prison. The older child shows insight into how his absence affected her and makes the point that he is the only father she has ever know. The letter from his mother in law present Mr Chiege as remorseful and full of regret – this is not borne out by the findings of the First-tier Tribunal judge who found him to be a liar and prepared to say anything to enable him to get what he wants.

14. A letter from a school friend of Mr Chiege’s wife describes him as a loving husband and father. This is not the finding of the First-tier Tribunal judge who found that he coerced his wife into committing crime and that there had been an incident of domestic violence in the past.

15. The letters from the nursery and the school do not assist the appellant. They do no more than indicate an involvement in the children's lives and make non-specific comments about the emotional impact of separation whilst he was in prison. It is inevitable that when a father/husband is sent to prison that will have an emotional impact on the family. An undated letter from the primary school head teacher refers to her judgement that should Mr Chiege not be allowed to remain in the UK "the effect on their emotional well-being and their learning would be significant". The head teacher does not explain on what basis she draws that conclusion, how much contact she has had with the children and she does not say what she means by significant. There is nothing in those letters that begins to suggest that the separation of Mr Chiege from his family has had unduly harsh consequences for the children or his wife. The headteacher refers to the middle child 'coping' with her father's imprisonment. There is nothing in these letters to indicate that with the support of their mother the children would not cope. They may be, understandably, upset, but that is a long way from a conclusion that the effect of separation would be unduly harsh on them.
16. The report from the Probation Service dated 7<sup>th</sup> March 2018 states that there is no indication that Mr Chiege has continued to offend and that probation records indicate that he is "trying to make pro-social decisions for himself and his family."
17. The social worker who prepared the 'Family Circumstances/Article 8 report' is an experienced professional. She interviewed Mr Chiege, his wife and their children on one occasion for about 2 hours. The report says that she also had information provided to her by Mr Chiege's solicitors, but the report does not say what that information was. She records Mrs Chiege's view that if Mr Chiege were deported she would have to give up work and claim benefits, her depression and low mood and the difficulties that Mrs Chiege says she would have without her husband present. The report makes no mention at all of how Mrs Chiege coped whilst Mr Chiege was in prison; whether she gave up work or what she did with her young children. The report states that removal of Mr Chiege will take away the financial and emotional stability the family enjoys but makes no mention of the effect on the children of their father being in prison and what effect that had on their emotional stability. Although she concludes that the children are likely to experience emotional trauma and stress she does not provide any indication of what that might be. This is surprising given that the children have already been separated from their father whilst he was in prison. The reference by one of the teachers that the middle child coped, with her mother's support, provides greater insight than the social worker, with its reference to the separation that occurred when Mr Chiege was in prison.
18. None of the letters or reports relied upon provide analysis of whether and how the children's behaviour or learning was significantly undermined by Mr Chiege's imprisonment, save for the oldest child. Although, as submitted by Mr Timson, deportation is very different from a lengthy period in prison, the evidence relied upon does not support a finding that it would be unduly

harsh for them to be separated from their father. He is their carer, but they are cared for by both their parents; whilst he was in prison Mrs Chiege was truly their primary carer. There is simply inadequate evidence to be able to conclude that the separation of the children and Mrs Chiege from the appellant would be unduly harsh. Yes, it is in their best interest to live with and grow up as part of a family unit with both their mother and father. Yes, it would be very upsetting and emotionally stressful but there is no evidence that could lead to conclusion that would bring Mr Chiege within Exception 2.

19. The children are British; there was no suggestion that they would be able to easily relocate to Nigeria, even if they wanted to. It almost goes without saying, given their age, family ties and lives here in the UK, that it would be unduly harsh for Mrs Chiege and/or the children to relocate. Mrs Chiege has caring responsibilities over and above those with her children.
20. Mr Chiege did not rely on any other factor to support his human rights claim; his claim is based upon his family relationships. He has been convicted of a serious offence for which he received a lengthy prison sentence. It is a consequence of criminal activity that families are separated. Although the best interests of the children are for him to remain in the UK, the evidence before me does not support the contention that it would be unduly harsh for these children, or his wife, to be separated from him on his deportation. I of course consider that because of deportation he would be unable to apply to return to the UK for several years and that contact with his children and wife will necessarily be restricted to telephone, skype and similar and that visits may be very limited. But the evidence before me does not support a conclusion that those circumstance would be unduly harsh.
21. The appeal is dismissed.

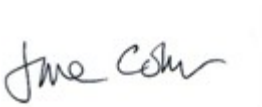
Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by dismissing it

Date 27<sup>th</sup> September 2018



Upper Tribunal Judge Coker