



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

Appeal Number: HU/08385/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 18th August 2017**

**Decision & Reasons
Promulgated
On 20th September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**ANDY [K]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Sharma (Counsel)
For the Respondent: Mr E Tufan (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge A W Khan, promulgated on 18th November 2016, following a hearing at Harmondsworth on 26th October 2016. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant

subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Ghana, who was born on 7th August 1978.
3. The refusal letter of 30th September 2015 rejected the Appellant's human rights claims on the basis that he could not meet the requirements of Appendix FM, given his claimed relationship with [VA], who was a national of Ghana, and who herself only had limited leave to remain until 13th November 2017. She was not a British citizen. She was not settled in the UK. She had no refugee status in this country. Although there were children of the relationship, they were not British citizens, and they had not lived in the UK continuously for at least seven years immediately preceding the date of the application. One child, was a British citizen, but her biological father had an involvement in her upbringing (see paragraph 2 of the determination).

The Judge's Findings

4. The judge gave close consideration to the fact that, although not his biological daughter, the Appellant claimed to perform certain duties with respect to the British citizen child of [VA], who had been borne to her on account of a relationship with another person, by the name of [FA], and these duties consisted of the Appellant, as her stepdad, taking her to school as well as to church every Sunday, and also taking her to the park or the funfair. The judge in this respect concluded that, "I find that he may very well perform some kind of role in her life but it is not exclusive and that she also maintains a relationship with her real father" (paragraph 17).
5. The judge went on to conclude that, apart from this one child who was a British citizen daughter of a [FA], the other three children of [VA], were not British citizens, and their mother only had limited leave to remain in this country, and the children were in any event very young. The judge concluded that, "there is no valid reason why they could not relocate to Ghana if the mother wishes to do so" (paragraph 20).
6. The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the judge's decision was "inadequate" in respect of his finding that the Appellant's partner's British child could accompany the Appellant, her mother, and the children to Ghana. This is because the judge failed to properly consider the best interests of the child concerned. Moreover, the judge erred in considering whether it would be unduly harsh to expect the child to relocate to Ghana.

8. On 2nd June 2017, permission to appeal was granted.

The Hearing

9. At the hearing before me on 18th August 2017, Mr Sharma, appearing on behalf of the Appellant, submitted that there was only one Ground of Appeal, namely, whether in applying the principles in **ZH (Tanzania) [2011] 2 AC 166**, the judge had failed to give due regard to the position of the single British citizen child. He made two submissions in this respect.
10. First, the judge had only given consideration to the Appellant himself (see paragraph 19). He had referred to there being no “very significant obstacles to his integration into Nigeria” because he had lived there for the first 24 years of his life, and could return there (paragraph 19).
11. Second, insofar as consideration was given to the position “outside the Immigration Rules under Article 8” the reference was to the fact that the “Appellant has now fathered three children”, none of whom were British citizens, and where their mother also only had limited leave to remain. The judge had said that there was “no valid reason why they could not relocate to Ghana if the mother wishes to do so”. The judge had then also considered the position of the British citizen child, aged now 11 years, but had only been in full-time education for the last six years. Her father was a British citizen, who had stated that it was not possible for his British citizen child to live with him because his present partner objected to this, and that “the Appellant played a father role” in her life, but there was “no mention made of any possible objection to” this child “living elsewhere than in the UK” (paragraph 20). On this basis, the judge had concluded that there were no “compelling circumstances” showing that the Appellant could succeed under Article 8 outside the Rules (paragraph 21).
12. Mr Sharma submitted that such a conclusion was not tenable because one was dealing with a British citizen child with respect to whom the Appellant was performing a fatherly role.
13. For his part, Mr Tufan submitted that the position with respect to the British citizen child’s mother, [VA], had changed, in that, on the basis of the fact that she was the mother of a British citizen, she had now been granted further leave to remain. Even so, the judge had referred to the fact that the Respondent Secretary of State had rejected his application on the basis that he was the partner of [VA], because “the parties were living at different addresses” (see paragraph 13).
14. The judge’s firm conclusion was that, “I in fact do not accept that the parties are in a genuine relationship as partners as there is a lack of evidence of this” and that

“There is little credible evidence to support the claim that they are in a relationship with each other as partners. There are no witnesses to

support such a relationship. The letters written, as contained in the Appellant's bundle, concern the Appellant's relationship with his three children and other than what the Appellant and [VA] had to say in evidence, there is nothing else to support their claim that they are in a relationship" (paragraph 13).

Even so, Mr Tufan submitted that, given that the judge had then gone on to say that the Appellant "may very well perform some kind of role" in the life of the British citizen child (see paragraph 17), may have tipped the balance in favour of the Appellant, such that, if an error of law could be found at this hearing, the matter should be remitted back to the First-tier Tribunal, for a further appraisal of the situation before this Tribunal.

15. Finally, he submitted that with respect to the consideration of Section 55 BCIA 2009 and the best interests of a child, being a primary consideration, the case of **Tinizaray [2011] EWHC 1850** had established that this should not be regarded as "establishing anything in the nature of a general principle" about Section 1 of the Children Act (see the affirmation of this principle in **AA (Iran) [2013] EWCA Civ 1523**).
16. In reply, Mr Sharma submitted that it was not true that the Appellant and [VA] were not in a genuine and stable relationship because there was evidence of an ongoing relationship, and an explanation was given for why the two of them were living separately. The British citizen child's father had given evidence why he could not have his British citizen child living with him, namely, that his present partner objected to the child coming to live with them. The judge's findings were such that an error of law should be found and the matter remitted back to the First-tier Tribunal.

No Error of Law

17. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and re-make the decision. I come to this conclusion because whatever errors there may be in the determination, as alleged before me today, they are simply not material errors with respect to the decision made. This is a case where the Appellant has a most unenviable immigration record. There has been a determined effort on his part to remain in this country. The material findings of the judge were clear. These were that, on the evidence before him, the Appellant and [VA] were living separately at different addresses. Mr Sharma may very well submit before this Tribunal that evidence was given for why that was the case. Nevertheless, the judge's conclusions were clear that he did not accept that the parties were in a genuine relationship as partners "as there is a lack of evidence of this", and even if there was evidence, "there is little credible evidence to support the claim that they are in a relationship with each other as partners" (paragraph 13). The judge gave detailed reasons for why he came to this conclusion.

18. Secondly, much has been made of the fact that the judge had accepted that the Appellant, whose immigration history as I have indicated is far from creditworthy, had concluded that the Appellant “may very well perform some kind of role in her life” (paragraph 17) such that it would be in this child’s “best interests” for this relationship to continue, such that it would make it untenable to expect the Appellant to return to his country, with or without this British citizen child. This is an incorrect reading of what the judge said at paragraph 17. First, against the background of the judge having made it quite clear that he did not accept that the Appellant and [VA] were in a genuine relationship, the judge noted the letter of 19th October 2016 from the British citizen father of the British citizen child, which stated that he comes to see her once a month and sometimes buys a present and sometimes she goes to his house and spends time there. The letter said that the Appellant is the person who takes this British citizen child to church every Sunday and also takes her to the park or the funfair. It was against this background that the judge concluded that the Appellant “may very well perform some kind of a role in her life” but the full sentence goes on to also read that, “but it is not exclusive and that she also maintains a relationship with her real father” and that “the Appellant cannot meet the requirements of the Immigration Rules under E-LTRPT.2.3 notwithstanding that he may have established some kind of relationship with this particular child” (paragraph 17). It is clear from this that the judge is only stating that the Appellant “may very well perform some kind of role”. It is also clear that whatever this role may be, whether contrived or real, is one that does not lead the judge to conclude that the Appellant succeeds under the Immigration Rules.
19. Third, the issue therefore boils down to this, namely, that with the Appellant’s natural mother, [VA], now having been granted further leave to remain in the UK, and with her natural father, [FA], still remaining in contact with his natural child, it is inevitably the case that this British citizen child will have to accompany the Appellant to Nigeria. This is not so. Nothing in her “best interests” indicates that it should be so. The Appellant is a citizen of Nigeria. His alleged partner, [VA], is a citizen of Ghana. The judge had already found that there was no genuine relationship between [VA] and the Appellant. The judge dealt with the other three children on the basis that they were very young and were not British citizens. The judge held that “there is no valid reason why they could not relocate to Ghana if the mother wishes to do so” (paragraph 20).
20. If the mother now has further leave to remain in the UK, then she may, or she may not, choose to relocate to Ghana. If she does not, then her three non-British citizen children remain with her. This is also the case with her British citizen child, borne of her relationship with [FA]. It was open, as the judge held (at paragraph 19), for the Appellant himself to return to Nigeria. He is a citizen of Nigeria. He would face “‘no’ very significant obstacles to his integration into Nigeria”. There is no relationship established as the judge found between the Appellant and [VA]. His only relationship with respect to the British citizen child is that “he may very well perform some kind of role in her life” (paragraph 17).

21. Nevertheless, this is not exclusive, and this British citizen child also has a relationship with her real father, and one which, according to the letter of 19th October 2016 from the real father, is only hampered by the fact that his current partner objects to having his child live with him. In the circumstances, all things considered, the conclusion reached by the judge was entirely open to him.
22. This is particularly so, lest it be overlooked, that in applying Section 117B of the 2002 Act the judge was clear that, “the fact of the matter is that the Appellant has indeed shown a complete disregard for UK immigration law”, in circumstances where the Appellant started a relationship with [VA] when he had no right to remain in the UK and then went on to father three children with her “notwithstanding any relationship that he may have established with [I]”.
23. Even so, the judge was not unmindful of the fact that, “there is very little independent evidence to support the role that it is claimed the Appellant plays in” the British citizen child’s life, because “the letters in support in the bundle are of a general nature and mainly refer to the Appellant’s church activities” and “it has not been shown that the Appellant has a genuine and subsisting parental relationship with the child” (paragraph 23).

Notice of Decision

24. There is no material error of law in the original judge’s decision. The determination shall stand.
25. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

19th September 2017