



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

Appeal Numbers: HU/04934/2016

THE IMMIGRATION ACTS

Heard at Field House

On 27 March 2018

**Decision & Reasons
Promulgated
On 5 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

OMOTUNDE OMOLOWO OMOWANLE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Bustani, Counsel

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS ON ERROR OF LAW

1. The appellant is a citizen of Nigeria who was born on 14 November 1937, making him 80 years of age. He entered the UK as a visitor on 14 December 2005 and has remained here ever since as an overstayer. He was encountered and served with a notice of liability to removal in 2007 but he did not leave. On 7 September 2015 he made an application for leave to remain on human rights grounds, citing his private life established during his lengthy residence in the UK and his family life with his daughter, Ms Oluwadamilola Ayotope Omowanile, who is a British citizen born on 24

June 1972. In his application form, he claimed to qualify under the parent route.

2. The respondent refused the application on 10 February 2016. The refusal letter pointed out the appellant did not meet the eligibility requirements of the rules as a parent because his daughter was over 18. For the purposes of paragraph 276ADE(1)(vi) of the rules, it was not accepted there would be very significant obstacles to the appellant's reintegration in Nigeria. He had spent 68 years there before coming to the UK. The fact the appellant had a daughter in the UK, supportive friends in the UK and some medical conditions were not considered to warrant a grant of leave outside the rules. With regard to his claim to have no family to support him in Nigeria, when he was interviewed at the police station in December 2007 he said he had one child in the UK and four other children. The medication he was taking would be available in Nigeria.
3. The appellant appealed to the First-tier Tribunal, lodging short, generic grounds of appeal. The appeal was heard at Taylor House on 13 June 2017 by Judge of the First-tier Tribunal S J Clarke. He heard oral evidence from the appellant and his daughter. He made the following findings:
 - The appellant's wife had entered the UK and appeared to live with him in the UK;
 - However, she was not a party to the proceedings;
 - She may require kidney dialysis three times a week;
 - The appellant plays a significant role in the upbringing of his 9-year old granddaughter, who is a British citizen;
 - He takes her to school and collects her from school, as well as afterschool clubs;
 - He makes food for her and looks after her until his daughter returns from work;
 - The child has no contact with her father;
 - It was in the best interests of the child for the appellant to be able to continue to look after her because there is a close bond between them;
 - The appellant's daughter would, in practice, be able to make alternative arrangements for childcare, as many people have to do;
 - The appellant had remained in the UK unlawfully since his visit visa expired in 2006 and it was appropriate to draw an adverse inference from the delay in seeking to regularise his situation;
 - Despite his age and his suffering from hypertension and kidney disease, the appellant was fit enough to look after a 9-year old child and take her to school on foot;
 - Appropriate treatment would be available for the appellant in Nigeria;

- The appellant has two children living in Nigeria and he was fit enough to make the journey to the nearest town from the village to obtain medical treatment;
 - The appellant's daughter could remit money to him even if she had to pay for childcare after the appellant had left; and
 - The appellant could attend church in Nigeria.
4. The judge then reached the following conclusions on the law:
 - The weight to be given to the appellant's private life was reduced by the fact he had remained unlawfully;
 - Weighing in favour of the appellant were his age, the length of his residence in the UK, his medical needs and the fact his wife was living with him in the UK, albeit unlawfully;
 - The strongest matter weighing in his favour was the likely impact on his granddaughter; but
 - The appellant's removal was nonetheless proportionate.
 5. It is not clear from the decision whether the appellant pursued his appeal under paragraph 276ADE(1)(vi) or not. However, the grounds seeking permission to appeal only argued that the judge erred in his approach to article 8 outside the rules. The grounds pointed out the judge had not taken a structured approach as provided in *Razgar* [2004] UKHL 27.
 6. Permission to appeal was granted by Judge of the First-tier Tribunal P J M Hollingworth because it was arguable the judge had attached insufficient weight to the fact the father of the appellant's granddaughter played no part in her life and there was a close bond between the appellant and the child. It was arguable the appellant could fall within section 117B(6) of the Nationality, Immigration and Asylum Act 2002¹. It was arguable the judge had taken too restrictive a view of the public interest.
 7. The respondent has not filed a rule 24 response opposing the appeal.
 8. I heard submissions from the representatives on the question whether the Judge made a material error of law in his decision.
 9. Ms Bustani adopted the issue raised for the first time in the grant of permission to appeal. She acknowledged that, in order to succeed in showing the appellant could rely on section 117B(6) of the 2002 Act, she would have to show he enjoyed a parental relationship with his granddaughter. She argued that the facts of the case showed that there

¹ In the case of a person who is not liable to deportation, the public interest does not require the person's removal where

- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
- (b) it would not be reasonable to expect the child to leave the United Kingdom.

was a parental relationship and she relied on the guidance provided by the Upper Tribunal in *R (on the application of RK) v Secretary of State for the Home Department (s.117B(6); "parental relationship") IJR* [2016] UKUT 00031 (IAC). It is helpful to set out that guidance here:

“42. Whether a person is in a “parental relationship” with a child must, necessarily, depend on the individual circumstances. Those circumstances will include what role they actually play in caring for and making decisions in relation to the child. That is likely to be a most significant factor. However, it will also include whether that relationship arises because of their legal obligations as a parent or in lieu of a parent under a court order or other legal obligation. I accept that it is not necessary for an individual to have “parental responsibility” in law for there to exist a “parental relationship,” although whether or not that is the case will be a relevant factor. What is important is that the individual can establish that they have taken on the role that a “parent” usually plays in the life of their child.

43. I agree with Mr Mandalia’s formulation that, in effect, an individual must “step into the shoes of a parent” in order to establish a “parental relationship”. If the role they play, whether as a relative or friend of the family, is as a caring relative or friend but not so as to take on the role of a parent then it cannot be said that they have a “parental relationship” with the child. It is perhaps obvious to state that “carers” are not *per se* “parents.” A child may have carers who do not step into the shoes of their parents but look after the child for specific periods of time (for example whilst the parents are at work) or even longer term (for example where the parents are travelling abroad for a holiday or family visit). Those carers may be professionally employed; they may be relatives; or they may be friends. In all those cases, it may properly be said that there is an element of dependency between the child and his or her carers. However, that alone would not, in my judgment, give rise to a “parental relationship.”

44. If a non-biological parent (“third party”) caring for a child claims such a relationship, its existence will depend upon all the circumstances including whether or not there are others (usually the biologically parents) who have such a relationship with the child also. It is unlikely, in my judgment, that a person will be able to establish they have taken on the role of a parent when the biological parents continue to be involved in the child’s life as the child’s parents as in a case such as the present where the children and parents continue to live and function together as a family. It will be difficult, if not impossible, to say that a third party has “stepped into the shoes” of a parent.”

10. The facts in that case were that a grandmother, who lived with her son, daughter-in-law and grandchildren, was challenging a decision of the Secretary of State that she did not have a parental relationship with the children. The Upper Tribunal found on the facts of the case there was no irrationality or unlawfulness in the decision and dismissed the application for judicial review.
11. Ms Bustani said the key test was whether the appellant had “stepped into the shoes” of his granddaughter’s absent father. She pointed to the appellant’s daughter’s witness statement describes the actions which her

father took in looking after his granddaughter and also the close bond between them. She is a single mother and a full-time social worker. She often works late plus she has a second job as a nursing assistant. She says that removing the appellant would have a very negative impact on her daughter.

12. Ms Bustani argued the judge's assessment was inadequately reasoned. He had not considered the psychological impact on the child. The judge should have made a finding under section 117B(6).
13. I asked whether the point that the appellant had a parental relationship so as to fall within section 117B(6) had been argued before the judge. Ms Bustani could not help me with that.
14. Mr Avery argued the decision was adequate. The relationship described was that of a grandparent and his granddaughter and nothing more. Section 117B(6) had not been argued, even in the grounds seeking permission to appeal. It was not an obvious point which the judge should have taken up.
15. Ms Bustani replied. I asked why the appellant's wife had not been referred to. I asked whether it was contended that the appellant had a parental relationship with the child but the grandmother did not. Ms Bustani repeated that the evidence showed there was a close bond between the appellant and the child.
16. I reserved my decision as to whether the judge's decision contains a material error of law. Having done so, I have concluded it does not and the decision shall stand. My reasons are as follows.
17. Firstly, it is clear that the issue of whether the appellant has a parental relationship with his granddaughter so as to bring him within section 117B(6) was never raised in the First-tier Tribunal. It was not argued by counsel and the evidence did not make any explicit claim about it. There was no reason for the judge to have considered it of his own motion.
18. Secondly, had he done so, I am not satisfied he would have found there is a parental relationship in this case. Whilst I accept the judge noted the child's father plays no role in her life and there is a close bond between the appellant and her, the thrust of the daughter's evidence was that her father helped her out with child care because she was a single parent and she worked long hours. This is not the same as stepping into the shoes of a parent. There was no evidence of the appellant making decisions in relation to the child. Nor had he taken on any legal obligation towards her. The latter was considered to be a relevant factor in *RK* even though parental responsibility has to be distinguished from a parental relationship.
19. Furthermore, it is clear that the position of the appellant's wife has deliberately been left out of the equation. The appellant and his daughter

did not provide a complete picture to the judge of the make-up of the household.

20. Thirdly, it is clear that the judge had at the forefront of his mind the factors relied on by the appellant, including the strong bond between the appellant and his granddaughter and the impact on her of removal. It was not incumbent on the judge to speculate about the “psychological impact” on her.
21. In sum, the decision is brief but adequately reasoned as to the issues which were before the judge.
22. The First-tier Tribunal’s decision to dismiss the appeal shall stand and the appellant’s appeal is dismissed.

Notice of Decision

The Judge of the First-tier Tribunal did not make a material error of law and his decision dismissing the appeal shall stand.

No anonymity direction is made.

Signed

Date 27 March 2018

Deputy Upper Tribunal Judge Froom