



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

Appeal Number: HU/05426/2019

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On 16 September 2020**

**Decision & Reasons  
Promulgated  
On 21 September 2020**

**At a remote hearing via Skype**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**BABATUNDE [A]**

Appellant

**and**

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

Respondent

**Representation:**

For the appellant: None

For the respondent: Mr Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS (V)**

1. The appellant has appealed against a decision of the First-tier Tribunal ('FTT') promulgated on 5 November 2019 dismissing his appeal on Article 8 grounds.

**Background**

2. The appellant, a citizen of Nigeria, relied upon his family relationships with A, a British citizen and her son D. The FTT found that the relationship between the appellant and D was "not

particular strong”, he “acted more as a babysitter than as a father” and he had only been cohabiting with A since March 2019 (around seven months at that time). The FTT concluded that there was family life for the purposes of Article 8 but did not consider that the appellant’s removal would be a disproportionate breach of Article 8.

3. FTT Judge JM Holmes granted permission to appeal in a decision dated 27 April 2020. He observed that although the grounds of appeal disagreed with the FTT’s findings it was arguable that the FTT failed to adequately engage s. 117B(6) of the NIAA 2002.

## Hearing

4. The appellant and his solicitors, CW Solicitors did not attend the hearing before me and provided no explanation for this. I am satisfied that the notice of hearing was validly served upon the appellant’s solicitors and I could fairly proceed with the hearing in the absence of the appellant or his representatives.
5. Mr Tan relied upon a rule 24 notice upholding the FTT’s decision. I reserved my decision, which I now give with reasons.

## Discussion

6. I entirely agree with Judge Holmes observations in relation to the written grounds of appeal:

“They are excessively lengthy, and appear to be no more than an attempt to reargue the appeal, amid a series of disagreements with the Judge’s findings. They make a variety of assertions about what the evidence before the judge is said to have been, without identifying the sources.”

7. The grounds of appeal do no more than reargue the appeal and do not identify any material error of law. The FTT’s decision is not clearly structured but when the decision is read as a whole the findings of fact were entirely open to it. Having made those findings the appellant’s appeal was bound to fail for the reasons outlined in the respondent’s rule 24 notice.
8. Although the FTT made findings of fact regarding the appellant’s relationship with D (summarised above), it did not make an explicit finding as to whether the appellant had a *genuine and subsisting parental relationship* with D, as required by paragraphs R-LTRPT 1.1 and EX.1 of the Immigration Rules and s. 117B(6) of the NIAA 2002. However, when the decision is read as a whole I am satisfied that the findings of fact are sufficient to indicate that the FTT did not regard the relationship to be a genuine and subsisting parental one as at the date of hearing. I entirely accept that a person may have a

parental relationship that is genuine and subsisting albeit not particularly strong. However, the FTT clearly regarded the relationship not to be parental at all, but a short-lived one more akin to babysitting. I note that the author of the grounds of appeal understood the FTT to have effectively concluded that there was no genuine and subsisting parental relationship. The grounds rather focus their attention on disagreeing with that conclusion.

9. Whether a person is in a parental relationship with a child “*will depend on an assessment by the relevant court or tribunal of the facts of the particular case before it. The exercise is a highly fact-sensitive one*”- see [98] of AB (Jamaica) v SSHD [2019] EWCA Civ 661. The FTT has undertaken the relevant fact-sensitive exercise. This could have been fuller but in the circumstances of this case it was adequate.

## **Decision**

10. The decision of the FTT does not contain an error of law and is not set aside.

Signed: UTJ Melanie Plimmer  
2020  
Judge of the Upper Tribunal

Dated: 17 September