



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/14277/2019

THE IMMIGRATION ACTS

Heard Remotely at Field House
On 3 March 2021

Decision & Reasons Promulgated
On 23 June 2021

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

MUDASHIRU ADEBAYO ATOOKI
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Mohsin, Counsel, instructed by Lawmatic Solicitors

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

DECISION AND REASONS

1. This is an appeal by a citizen of Nigeria against the decision of the First-tier Tribunal dismissing his appeal against the decision of the Respondent on 7 August 2019 refusing him leave to remain on human rights grounds.
2. Permission to appeal was granted by Upper Tribunal Judge Bruce who decided to "... grant permission on the basis that the Tribunal arguably failed to take material evidence into account, identified as birthday cards sent to the Appellant by the children, photographs of them together when they visited and stayed with him, and membership cards for a library based at his location. It is further arguable that the Tribunal failed to have regard to the

Appellant's financial circumstances when it drew negative inference from his failure to make 'significant purchases' for his children."

3. That said, Ms Mohsin indicated that she intended to rely on all the grounds set out in a somewhat discursive document running to nineteen paragraphs prepared by Mr Paul Turner of Counsel. She is clearly entitled to do that and I have read them but I have not found it necessary to comment on each of them.
4. I begin by looking at the First-tier Tribunal's decision. The Appellant entered the United Kingdom irregularly in October 2004. As far as I can see he has never had permission to be in the United Kingdom although he has applied for permission on, I think, two occasions. An application under the Immigration (European Economic Area) Regulations 2006 was refused in July 2015 and on 25 September 2018 he made the application leading to the present appeal.
5. His circumstances include cohabiting in the United Kingdom with one "OC" and their having two children, a son born in October 2007 and a daughter born in June 2010. The relationship with his partner ended in 2013 but it was the Appellant's case that he continued to maintain his children financially and emotionally. It has been shown that the appellants son is a British citizen and his daughter is entitled to British citizenship, or will become so entitled very soon, if she is not presently a British citizen.
6. As will be well understood by anyone familiar with this area of law, by reason of Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 in the case of a person (such as the Appellant), who is not liable to deportation, the public interest does not require his removal where the person has a genuine and subsisting parental relationship with a qualifying child and it would not be reasonable to expect the child to leave the United Kingdom.
7. This is not a case where there is any suggestion that it would be reasonable to expect the children to leave the United Kingdom and it is accepted that the two children are "qualifying children" within the meaning of the Act. An important question, but not the only important question, in this appeal was whether there was a "genuine and subsisting parental relationship" with a qualifying child.
8. The First-tier Tribunal examined the evidence and concluded that there was not. I consider the decision in more detail now.
9. I note that the Appellant claims to have had temporary admission to the United Kingdom in 2010 subject to the condition that he did not work.
10. The Appellant's statement shows that he lives in the "E5" postcode district of London which I understand is Hackney and Newham. His former partner and their children live in Doncaster.
11. The Appellant made a statement dated 3 December 2019 in support of his appeal. Two paragraphs are particularly important and I set them out below:

"6. In 2013, our relationship with my partner was broke down due to family issues. We start living separately. Despite the relationship breakdown, I look after my son and daughter both financially and emotionally. I am still transferring some money to my partner's account

for my child support (please see the attached bank transfers/deposit receipt). Despite the bank deposit I gave some cash whenever I meet them.

8. I have a very good relation and close ties with my children. They are living at [address Doncaster]. Some time I visit them and they also come to me when they had school vacation and I took them to Hackney Library, park and other places. When we meet I bought foods, clothes and other necessary things for my children. I cannot live without my children. I cannot think their absence in my life. Thus, I have established my family and private life."

12. The Appellant gave evidence before the judge and was cross-examined.
13. At paragraph 46 of the Decision and Reasons the judge noted that the Appellant confirmed that he and his former partner had separated in April 2013 and he did not know the whereabouts of his former partner or their children until 2017.
14. The Appellant said he had made other efforts to establish their whereabouts, including asking the school where his son had attended, but he agreed that his former partner was the sole carer until he re-established contact with the family.
15. He said how he had travelled to Doncaster from London on some six or seven occasions although he also said how in 2019 he had made nine trips by coach.
16. The judge referred at paragraph 40 to receipts tending to confirm payment for items. At paragraph 54 he referred to the children having provided a greetings card which was in the bundle. At paragraph 48 the judge referred to photographs taken and submitted in evidence. At paragraph 63 of the Decision and Reasons the judge noted submissions to the effect that although the Appellant was in poor financial circumstances he did what he could for his children, entertaining them cheaply at libraries and parks and paying for groceries. The judge's attention was drawn to bank statements and transfer details.
17. The judge was reminded that the children are generally entitled to a relationship with both birth parents and it was submitted that the children could not live in Nigeria.
18. At paragraph 73 of the Decision and Reasons the judge expressed scepticism about the claims that the Appellant had maintained his children by sending payments to their mother. There was evidence of payments. The first payment was dated 4 October 2016 but, according to the Appellant, he did not know the children's whereabouts until 2017 and the judge could not make sense of that strand of evidence.
19. At paragraph 76 the judge reminded himself of the decision in **KO (Nigeria) and Others [2018] UKSC 53** and directed himself that he must consider the matter from the perspective of the children involved and he also reminded himself of his obligations under Section 55 of the Borders, Citizenship and Immigration Act 2009 to consider the best interests of the children. The judge found it "surprising" that there was no statement from the former partner, that there was not an independent social worker's report and "Although both children are of course minors, no letters or other expressions as to their views have been submitted to the Tribunal."
20. At paragraph 70 the judge found the purchased items did not amount to "evidence of significant purchases". At paragraph 81 he found himself "not satisfied that the

Appellant has discharged the burden of establishing that he has a genuine and subsisting relationship with either child". Clearly there is almost certainly some kind of relationship but for the purposes of section 117B(6) a subsisting parental relationship was required.

21. Also at paragraph 81 the judge fell short of disregarding the evidence of financial contributions but said they did not establish a genuine and subsisting relationship with the children.
22. At paragraph 85 the judge found that the Appellant would not face "very significant obstacles" on return to Nigeria. He had family there and could obtain employment there.
23. I consider first the grounds of appeal. This informs me that the "main ground of challenge is that the FtJ erred in the consideration of the children and their best interests."
24. This develops into a criticism of the judge failing to expressly follow the five stage stages in Razgar [2014] UKHL 27 and failing to consider properly the best interests of the children.
25. At paragraph 8 in the grounds the judge is criticised for drawing adverse inferences from the absence of a statement from the partner or indeed the children and points out that there was in fact a card from the children.
26. It is said the judge was wrong to record that the Appellant was only able to establish contact with his partner in 2017. It was said that the Appellant said he traced his partner in 2016.
27. The grounds point out the Appellant has little money and this should have been reflected in the analysis of the contributions he made. The children had current Hackney Library cards.
28. The grounds contended the judge was given an explanation for how they managed to lose contact. That does not explain why the Appellant's former partner did not contact him.
29. It was contended the Appellant did take things to the children, including African food when he visited and this, together with his lack of resources, should have been considered and illuminated the findings about his maintaining them.
30. The judge was then criticised for not expressly following leading authorities about the best interests of the children. Then he was criticised for not engaging with the reasonableness of expecting the child to leave the United Kingdom.
31. It was said there were no clear findings on credibility.
32. In her submissions Ms Mohsin went further and pointed out there were no adverse credibility findings. In the absence of clear adverse credibility findings she submitted it was not clear how the judge could conclude that the relationship had not been established.
33. Mr Howells submitted there was no material error.

34. The judge plainly was concerned about the welfare of the child and was plainly not impressed with the evidence about the Appellant's involvement.
35. I have reflected on these things. There was clearly theoretical merit in the grounds of appeal. However this is not a case where there is clear evidence of significant financial contribution being made. It may be that the Appellant's resources are very limited, indeed they almost certainly are. He is not being penalised for poverty. The point is that he is not in a position to show that he has maintained a relationship by providing financially for the children. On any version of events there was a clear gap in the evidence in the contact of some years. There is no indication that the Appellant moved house at any stage. If the mother had wanted contact, contact could have been arranged presumably by her simply writing to him. There is an element in the case that is unsatisfactory but on any reckoning there has been a big gap in contact. There was no supporting evidence of contact continuing or that improved the lives of the children. The judge was perfectly aware of one card expressing affection for the Appellant but that does not take matters very far at all. There really is nothing here that establishes a "subsisting parental relationship" as required by the 2002 Act. At its highest there is evidence of some contact but there is nothing independent to show that it is encouraged in any way by the children's mother or that the relationship is parental, rather than avuncular or friendly. There is nothing to indicate playing a guiding role in the children's lives.
36. The judge could have made clearer findings but on any sensible reading of the Decision he was unimpressed and that influenced his decision. He was entitled to be unimpressed. He has given proper reasons. The evidence that was provided was scanty and there were obvious routes for further evidence which did not seem to have been explored.
37. There is nothing in the criticism about failing to consider the reasonableness of the children removing with him to Nigeria. That was not on anybody's agenda. Again there is theoretical merit in the criticism of not making an express finding about the children's best interests, but, given that there is a perfectly clear finding that the Appellant has little contact with the children and theirs is not in a parental relationship that would have been an academic exercise. Whilst the matters that concerned Judge Bruce particularly when she gave permission to appeal are, with respect, plainly arguable I am satisfied the judge was perfectly aware of the library cards and the photographs and the difficult financial circumstances of the Appellant. The judge considered them because he mentioned them but they did not amount to much.
38. The core point is the judge, having heard all the evidence, found it unsatisfactory and insufficient to prove the necessary relationship.
39. For the sake of completeness I note that the Secretary of State refused to engage with something that looked like a protection claim unless the Appellant chose to make a protection claim which he has not done. There is nothing wrong in deciding he could return to his country of nationality. He is a man coming up to about 50 years old with family in Nigeria. There is no reason he cannot establish himself there.

40. There is no material error of law established in this decision and I dismiss this appeal.

Notice of Decision

41. This appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 21 June 2021