



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08077/2018

THE IMMIGRATION ACTS

Heard at Civil Justice Centre, Cardiff
On 30 August 2019

Decision & Reasons Promulgated
On 24 September 2019

Before

MR C. M. G. OCKELTON, VICE PRESIDENT

Between

SUNDAY CHRISTOPHER OZOR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Shepard, instructed by Sabz Solicitors LLP

For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nigeria, born in 1974. He came to the United Kingdom on a visit visa in January 2005, or possibly very late in 2004. He has been in the United Kingdom ever since, for the most part without leave. There was a period in which he was granted leave between October 2016 and May 2017. He made a further application for leave to remain, apparently on Article 8 grounds inside or outside the Rules. That application was refused on 20 March 2018 and carried a right of appeal.
2. There is no basis, so far as I understand it, and so far as Mr Shepard has put before me, for saying that the appellant can succeed under Rules. He claims two relationships which he says ought to enable him to remain in the United Kingdom. The first relationship is the relationship with his partner, [], a British

citizen. Before Judge Obhi in February 2019 there were two items of evidence about that relationship. The appellant said that the relationship was an active one and that the appellant and his partner lived together in his one bedroom flat. His solicitors, who have acted on his behalf throughout, asserted that the appellant was not in a relationship and did not live with anybody else in his one bedroom flat. That is, I think, the sum total of the evidence about that relationship. Judge Obhi thought that there was no reason to make any findings in relation to Article 8 in favour of the appellant on the basis of that relationship.

3. The second claimed relationship is a relationship with a child. The assertion is that the appellant and the mother of the child were in a relationship, and that the child is the product of that relationship. I think it is fair to say that the tribunal has never been given any evidence at all about the identity of either the mother or the child and there is no evidence of any existing relationship between the appellant and the mother or the appellant and the child. The only further information is that at the time of the hearing before Judge Obhi the position was said to be that the mother refuses to allow the appellant any contact with the child.
4. I have described the child as said to be the appellant's child. It is also said that there has been DNA evidence establishing the relationship, but other than a statement by the solicitors (the same solicitors that produced the evidence denying the appellant's own account of his current relationship) in a letter that the DNA test finds the appellant to be the father of the child there is nothing: the evidence has not been produced to the tribunal. On that basis it was not surprising perhaps that Judge Obhi decided to dismiss the appeal.
5. The application for permission to appeal is supported by grounds asserting that Judge Obhi failed to take into account a request for an adjournment. The position was that when Judge Obhi came to hear this appeal there was no appearance by or on behalf of the appellant. There had been to the judge's knowledge two previous requests for adjournments: I will read out what the judge said about the procedural history of the case. The judge writes in paragraph 1 of the decision as follows:
 - "1. ... The application was refused on the 20 March 2018. The appellant appeals against that decision by Notice or Appeal lodged with the Tribunal on the 3 April 2018. The appeal was listed for a hearing on the 5 September 2019. On the 31 August 2018 his solicitors, Sabz solicitors wrote to the tribunal seeking an adjournment of the hearing on the grounds that the appellant was seeking to establish that he had a private and family life with his daughter [PJ] who was born on the 16 July 2005 and in respect of whom there were pending proceedings in the Wolverhampton Family Court. He provided a copy of an order dated the 25 April 2018 [that is to say many, many months before the application for the adjournment]. That order provided for DNA testing to be undertaken through the offices of CAFCASS (Children and Families Court Advisory Service). The letter advised that the appellant had been proved to be the child's father and that the court would now consider further steps towards direct contact. The case was adjourned to the 31 October 2018 with a direction that the appellant's solicitors must provide the Tribunal with an update in respect of the court proceedings two clear days before the adjourned hearing. It was noted at the CMR on the 31

October 2018 that no update had been provided as directed and therefore the matter was set down for a hearing on the 1 February [2019].

2. On the 25 January 2019 the solicitors representing the appellant wrote to the Tribunal in almost identical terms, as the letter provided before the previous hearing on the 5 September 2018 in which they wanted the case to be adjourned "*to a date in the New Year*" as this would allow the appellant to represent himself and his circumstances more accurately.
 3. The application of the 25 January 2019 was considered by the Tribunal caseworker who did not accede to the request and adjourned it to the hearing on the 1 February 2019, so that proper consideration could be given at that hearing."
6. The judge goes on to say that he considered the application for adjournment and refused it on the basis that no further progress could be made without proper information being given to the tribunal. As far as I understand it no complaint is made about the judge's approach to that application for adjournment. What is said instead by the solicitors is that a further application was made for an adjournment. That application was the subject of a letter of 31 January 2019, in other words the day before the date fixed for the hearing. The application for permission to appeal includes, what purports to be, a copy sent by fax to the tribunal. On examination however it appears that the person receiving the fax was indeed the solicitors. It may be that what they have sent was a copy of a letter faxed to them for onward transmission, but in any event, there is no evidence of its transmission by the process claimed by the solicitors.
7. There is, however, a copy on file which is date stamped 1 February 2019. Evidently it arrived somewhere in the Birmingham Hearing Centre, it having been addressed rather vaguely, after hours on 31 January and was then received. It appears quite evident that it was not before the judge when he made his decision. I will read the letter in full:

"Dear Sirs,

Subject: Request for Adjournment

Appellant: Mr Sunday Christopher Ozor
DOB: 29.10.1974
Nigeria

We continue to represent the above named in his immigration matter.

Our client's appeal matter is scheduled to take place on Friday 1st February 2019 at IAC Birmingham.

We write to explain that the Appellant is currently going through proceedings at the Family Court at Wolverhampton under Case Number: [] and a hearing has been set for 15th February 2019.

Please find attached a letter from a senior solicitor of our firm Mr Carl Davies who is currently dealing with the appellant's family matter. Unfortunately we cannot disclose any further information with regards to the family matter due to it being in relation to

a minor child. Our Family law department is currently in the process of making an application to the family court for disclosure.

We further request that under the current circumstances, it is not appropriate for the Appellant to continue with his Immigration Appeal which is set to take place on 01 February 2019. This is because the outcome of his family matter is likely to have an effect on his immigration appeal, and to reach an accurate outcome relating to the Appellant's circumstances, it would be ideal to wait for the outcome of his family matter.

In the event that the court wishes to go ahead with the appeal matter, we wish to withdraw as acting for the client as we currently do not have instructions from our client to proceed with this matter at this moment in time.

In the light of the above it is requested that the Appellant's appeal hearing is adjourned to a date after February 2019 allowing him time to complete his family matter. This will allow the Appellant to represent himself and his circumstances more accurately and will save time and money to all parties involved.

We confirm that our request does not prejudice the Respondent in any way.

Should you have any questions please contact our office."

8. Despite the assertion at the end of that letter there is no evidence, so far as I am aware, that this application had been mentioned to the respondent at any time. What is said is that that application was made in time and should have been considered by the judge. So far as the first of those assertions is concerned I am very far from satisfied that it was made in time. It was obviously made on the day before the hearing by fax and was received on 1 February; but it is wholly unreasonable to expect a busy hearing centre and a judge to know that vaguely addressed material is present when it has been put in at the last minute. However, even if it had been received in time, there is nothing in it which in my judgement could have persuaded the judge to reach a different view from the view he did reach.
9. First, it is a letter which is wholly equivocal. Indeed looking at the balance of assertions in it, the main assertion appears to amount to a withdrawal of the appellant's case. "It is not appropriate for the appellant to continue with his immigration appeal ...We do not have instructions from our client to proceed with this matter". It then goes on to ask for an adjournment, but it does so on a basis that no information is to be provided to support it other than the assertion that there is a hearing on 15 February 2019. There is no Notice of Hearing attached to the letter. There is no indication of why the hearing was not mentioned in the earlier adjournment application of 24 January. There is no indication of what the hearing is to be about. There is no indication of any progress that that might be made at it, which might mean that, as the letter suggests, the family matter will have been completed by the end of February 2019. It seems to me that the solicitors left it until the last possible minute to make the adjournment application in these terms, because it is almost inconceivable that the first notice of an important hearing on 15 February 2019 was given as late as 31 January 2019. So, even if this application had been before the judge I cannot see that it would have added at all to the case for an

adjournment. In those circumstances, it appears to me that any error by the judge in not considering this further adjournment request was wholly immaterial to the decision the judge made on whether the appeal should have been adjourned.

10. No issues are raised as to the substantive matters which the judge considered. I therefore dismiss this appeal.
11. The position is of course that if there is a genuine relationship the appellant is at liberty to put the facts before the Secretary of State. It is no use doing that on the hypothetical and speculative basis upon which it has been done so far. I am told that even now, months after the hearing of 15 February, there is no evidence of any relationship between the appellant and his child that would be affected by his removal to Nigeria: but that no doubt is a matter to be considered if at all elsewhere. For the reasons I have given the appeal is dismissed.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 19 September 2019