



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/18903/2016**

THE IMMIGRATION ACTS

**Heard at Field House
On 23 November 2020**

**Decision & Reasons Promulgated
On 08 December 2020**

Before

**UPPER TRIBUNAL JUDGE GLEESON
DEPUTY UPPER TRIBUNAL JUDGE HARIA**

Between

**FRANCIS KWAKU ASIAMAH
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Ferguson, instructed by BWF Solicitors

For the Respondent: Mr D Clarke, a Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for leave to remain on human rights grounds. The appellant is a citizen of Ghana.

By a decision dated 6 February 2019, the Upper Tribunal dismissed the appellant's appeal, finding no material error of law in the decision of the First-tier Tribunal. The appellant appealed to the Court of Appeal.

On 27 February 2020, by consent, the Court of Appeal set aside the decision of the Upper Tribunal and remitted the appeal to it for remaking.

Given the concessions made by Mr Clarke at the hearing today, it is not necessary to set out the First-tier Judge's decision in detail nor to revisit the grounds of appeal.

The decision of the Upper Tribunal having been set aside the appeal returns to the error of law stage. The error of law identified in this appeal is the First-tier Judge's decision to balance the best interests of the appellant's youngest two children and his 15-year-old stepson, all British citizens, against the appellant's disregard for the immigration requirements of the United Kingdom.

Background

We remind ourselves, applying *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296, of the narrow circumstances in which it is permissible for the Upper Tribunal to interfere with findings of fact by the First-tier Judge. We do not consider that there is any proper reason to do so in this appeal. The following findings of fact constitute the core of the appellant's claim.

The appellant was born in Ghana in 1968. He is 52 years old now. He entered the United Kingdom in April 2000 when he was almost 31 years old. There is no evidence of legal entry and he has never had leave to enter or remain despite several attempts to regularise his circumstances.

The appellant has had a complex personal life since coming to the United Kingdom 20 years ago. In 2000, he began a relationship with a Ms de Paula and they had a child together, but she has returned to Brazil with the child and he has had no ongoing connection with that child since 2007.

There was then a relationship with a Ms Sonia Gregori which was broken up by the appellant's infidelity with Ms Juliet Gyabaah, a Ghanaian citizen who had two children by him, both of whom are Ghanaian citizens. The appellant does not rely on any ongoing relationship with those children.

The children with whom we are primarily concerned are the appellant's third family in the United Kingdom, arising out of his relationship with Ms Baaba Turkson. There are three relevant children, Ms Turkson's 15-year-old son by a previous relationship, and two children of this relationship, born on 1 November 2015 and 3 January 2018. Both Ms Turkson and all the children are British citizens.

The appellant and Ms Turkson have now been together for six years and have had a blessing ceremony at the Church where they met, and where they are regular attenders. It is accepted that they are living together in a relationship akin to marriage and that the relationship is genuine and subsisting.

The elder boy, the appellant's stepson, has no contact with his natural father: the First-tier Judge found as a fact that this appellant had stepped into the

shoes of a parent in relation to him. There is no challenge to that factual finding.

Upper Tribunal hearing

None of Ms Turkson's children, in particular the appellant's 15 year old stepson, can be required to go and live in Ghana as they are British citizens. They are qualified children within the meaning of section 117D of the Nationality, Immigration and Asylum Act 2002 (as amended). The appellant's partner, as a British citizen herself, is also a qualified person.

At the hearing today Mr Clarke accepted that, applying Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 (as amended), it would not be reasonable to expect the appellant's 15-year-old stepson to live in Ghana at such a significant age, scholastically and personally. He has lived all of his life in the United Kingdom and is a British citizen. Mr Clarke further accepted that it would not be reasonable to expect Ms Turkson or the two younger children, currently aged 2 and 5, to go and live in Ghana without the 15-year-old.

We are satisfied that the First-tier Judge erred in law at [38] in weighing the appellant's immigration history against the section 55 best interests of his children, including his stepson: see *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74 and *KO (Nigeria) & Ors v Secretary of State for the Home Department (Respondent)* [2018] UKSC 53.

There is no alternative but to set aside this determination and remake it. Given Mr Clarke's concessions, we have no hesitation in allowing this appeal on human rights grounds.

The Court of Appeal ordered the respondent to pay the appellant's reasonable costs of the proceedings in the Court of Appeal, to be assessed if not agreed. We make no order for costs in relation to the Upper Tribunal proceedings.

DECISION

- (1) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
- (2) We set aside the decision and remake it by allowing the appeal.
- (3) The respondent will pay the appellant's costs of the proceedings in the Court of Appeal, to be assessed if not agreed.
- (4) We make no order for costs in relation to the proceedings in the Upper Tribunal or First-tier Tribunal.

Signed [Judith AJC Gleeson](#)
2020

Date: 1 December

Upper Tribunal Judge Gleeson