



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01743/2019
HU/01746/2019
HU/01755/2019

THE IMMIGRATION ACTS

Heard by a remote hearing
On 28 May 2021

Decision & Reasons Promulgated
On 17 June 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EK
GB
DA

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr Walker, Senior Presenting Officer.

For the Respondent: Mr Broachwalla, Counsel instructed on behalf of the appellants.

DECISION AND REASONS

1. The Appellants are citizens of Ghana. The FtT did not make an anonymity order however UTJ Canavan made such an order on 28 May 2020 when giving directions for the further conduct of the appeals on the basis that the appeals involve child

welfare issues. No party has sought to vary that direction I therefore confirm that direction as set out below. The relevant child is referred to as X within this decision.

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellant and to the Respondent.

2. The Secretary of state with permission, appeals against the decision of the First-tier Tribunal (Judge Burns), who, in a determination promulgated on the 30 December 2019 allowed their appeals against the decision of the Respondent made on the 18 January 2019 to refuse the applications made for leave to remain.
3. Permission to appeal was granted by First-tier Tribunal Judge Wilson on the 1st of April 2020.
4. Whilst this is the appeal brought on behalf of the Secretary of State, for sake of convenience I intend to refer to the parties as they were before the FtT.
5. The hearing took place on 28 May 2021, by means of *Skype for Business* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing with the parties' advocates. The first appellant and his former partner attended the hearing remotely so that they could hear and see the conduct of the proceedings. No real technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means. The papers contained the bundles of documents filed before the FtT and the supplementary bundle and statement of X (filed on behalf of the appellants) was sent electronically by email.
6. I am grateful to Mr Walker and Mr Broachwalla for their detailed and clear oral submissions.

Background:

7. The background to the appeal is set out in the decision letter and the determination. It can be summarised as follows. The 1st and 2nd appellant are in a subsisting partnership and the 3rd appellant is their minor child. The claims made on behalf of the 2nd and 3rd appellants rely upon that of the 1st appellant. To that end, it is common ground that their appeals stand and fall with that of the 1st appellant.
8. Turning to the circumstances of the 1st appellant, he entered the United Kingdom illegally on 2 February 2002.
9. He began a relationship with R in or about 2007 and they began to live together. In 2007 a child X was born.

10. Whilst the relationship between the 1st appellant and R broke down in 2009, he maintained a relationship with X which included X living with him for periods of 6 months and sometimes for a year whilst R would undertake studies in the UK. Since that date X and the 1st appellant have maintained their relationships by regular contact during school holidays and undertaking other parental duties such as attending parents' evenings and sports days and by undertaking some financial responsibility for her.
11. In or about September 2014 the 1st appellant met his current partner and in 2015 moved in to live with him. She had entered the United Kingdom in 2003 as a visitor and was arrested as an overstayer and removed in October 2003. She was granted entry clearance as the spouse of a settled person on 22 January 2010 until 22 April 2012 and claimed to have entered the UK with this leave on the 16th of February 2010. On 9 March 2012 she applied for indefinite leave to remain as a spouse, but it was discovered that her prints differed from the prints used for her entry clearance application. On being interviewed she admitted to having a cousin make an entry clearance application. On 30th of July 2012 she was convicted of obtaining leave to enter the UK by deception. On 6 September 2012 she was removed from the UK and illegally re-entered on a date between 6 September 2012 and 30 January 2013. Since that date she has applied for leave to remain, but those applications have been refused.
12. Since 2015 the 1st and 2nd appellant have lived together and in 2016 the 3rd appellant was born. They are expecting a second child.
13. In 2015 the 1st appellant applied for leave to remain under the family and private life route, which was refused, and the appeal was dismissed on 22 October 2016. A further application was made in December 2017 but was rejected on 17 May 2018.
14. On 2 July 2018 he made a human rights claim in an application for leave to remain on the basis of his family life with his partner and child. This was refused in a decision letter dated 18 January 2019.

The respondent's decision:

15. The decision letter addressed the circumstances of all 3 appellants. It summarised the immigration histories of both the 1st and the 2nd appellants as set out in the preceding paragraphs.
16. When considering the 1st appellant, and by reference to the basis of his application made on family life in the UK with his partner, it was noted that he was not eligible to apply as a partner, parent, or child under Appendix FM because his partner was not British, settled or in the UK with refugee or HP leave and because he lived as part of a family unit with his family members. Thus, the application was only considered under the private life route. At paragraphs 10 – 17 the respondent set out reasons why he could not meet the private life requirements under the rules which included

his length of residence of 16 years and 5 months and that it was not accepted that there would be very significant obstacles to his integration into Ghana.

17. As to the circumstances of the 2nd appellant, her immigration history was summarised at paragraph 19 - 38 and for the reasons set out earlier her application was only considered on the basis of private life. Again, the respondent set out the reasons why the 2nd appellant could not meet the requirements of paragraph 276ADE based on her length of residence and that there were no very significant obstacles to her integration into Ghana.
18. In respect of the 3rd appellant, his immigration history was set out at paragraphs 48 - 57 and whilst reference is made to him having entered the UK, it is common ground that he was born in the UK although was not a British citizen.
19. The relevant part of the decision letter is set out under the heading "exceptional circumstances". In that part of the decision letter, the respondent considered whether there were "exceptional circumstances" which would render refusal a breach of Article 8 of the ECHR because it would result in unjustifiably harsh consequences for the appellants, relevant child, or another family member. For the reasons that the respondent went on to state, it was not accepted that there were any such circumstances that would warrant a grant of leave to remain outside of the immigration rules.
20. In this context, the Secretary of State considered the parental relationship between X and the 1st appellant. However, at paragraph 63 of the decision letter, the respondent set out that the 1st appellant had failed to provide evidence of any direct contact between himself and X and had failed to provide evidence that this relationship was anything above and beyond those ordinarily expect to see between a child and former partner of their parent. Further reasons were set out at paragraph 64. It was further noted that he did not have parental responsibility for X as she resided in the UK with her mother and that if the 1st appellant were to leave the UK, X and her mother could reside in the UK. Thus, it was concluded that the refusal of the application did not separate any children from their parents and did not obligate X to leave the United Kingdom.
21. For sake of completeness, the respondent considered the circumstances of the 2nd appellant at paragraph 65 noting that her cousin attempted to user identity to gain leave and whilst the respondent was unable to verify which of the 2 versions of the 2nd appellant's immigration history is the correct version, it did not affect the decision in the case and was not a basis for a grant of leave.
22. The 3rd appellant's circumstances were considered at paragraph 66.
23. The decision letter also set out that consideration had been given to Section 55 of the Borders, Citizenship, and Immigration Act 2009 (duty regarding the welfare of children) and that this had been taken into account in reaching the decision.

24. The application made on behalf of the 3 appellants was therefore refused.

The decision of the FtTJ:

25. The Appellants appealed the decision and the appeal came before the First-tier Tribunal on the 18 December 2019. In a determination promulgated on the 30 December 2019 the Judge allowed the appeals on human rights grounds (Article 8). The FtTJ heard evidence from the 1st and 2nd appellant and also from R. The judge also recorded that he heard from the relevant child X. From enquiries made during the hearing before the Upper Tribunal, X had provided a written witness statement to the FtT and it appears from the record or minute available to Mr Walker, that X confirmed the contents of the witness statement were true but that in view of her age there was no cross-examination conducted on behalf of the respondent.
26. Having heard the evidence, the FtTJ concluded at [5] that he found “the witnesses to be credible and consistent with the various supporting documentation.” At paragraphs [5]-[9] he set out his factual findings from that evidence.
27. The FtTJ then undertook his analysis and consideration of the legal issues under the heading “consideration” and identified that the best interests of any relevant children must be treated as a “primary consideration” and identified the children involved were X and the 3rd appellant.
28. The FtTJ then went on to address the human rights claim made in the context of Article 8 of the ECHR, noting that the appellant had a private and family life in the UK and that the family life extended to include X. The FtTJ adopted the structured approach set out in the well-known decision of Razgar and at [16] identified that the relevant issue was that of proportionality. At [17] the FtTJ set out the public interest considerations under section 117B, which included S 117B(6).
29. At paragraphs [18]-[19] the FtTJ address the issue of whether the appellant had a genuine subsisting parental relationship with a qualifying child. He set out the decision of R (on the application of RK) v SSHD (S117B(6)) “parental relationship” IJR [2016] UKUT 00031 at [18], and at [19] concluded that he found that the 1st appellant and X had a “genuine subsisting parental relationship”. He also considered that it would not be reasonable to expect them to leave the UK to go live in Ghana as she was born in the UK, is a British citizen in school and living with her mother who was herself settled in the UK. Whilst the judge appeared to reach that conclusion by reference to the Immigration Rules (R-LTRPT read with EX1 of Appendix FM), the FtTJ also observed the same result was reached by applying section 117B(6) as X was a qualifying child. The FtTJ also found that it was “plainly in the best interests of X that the (1st appellant) remains in the UK”.
30. When addressing the circumstances of the 2nd and 3rd appellants, he took into account that the 2nd appellant was not in a parental relationship with X and that the 3rd appellant was not a “qualifying child”. He found that the 2nd appellant was born and grew up in many years in Ghana could return there. However, the judge found

that requiring her and the 3rd appellant and the new baby to leave for Ghana would create a situation in which the 1st appellant was forced to separate from them or forced to leave the UK with them contrary to the provisions in section 117B(6) (at paragraph [20]). At [21] he found that if the 2nd and 3rd appellant and new baby were forced to go to Ghana without the 1st appellant then the 2nd appellant will be a single mother with 2 young children and that would mean that they would face a situation as described under paragraph 276 ADE (1) (iv) namely very significant obstacles to their integration. The judge also found that such an outcome would create an justifiably harsh consequences.

31. At [23] the FtTJ returned to the circumstances of the adult appellants. He found that both the 1st and 2nd appellants were in the UK unlawfully and that they had “little to recommend them”. He further observed that had it not been for the circumstances of X that he would have dismissed the appeals on the basis that it was reasonable for all 3 appellants to return to Ghana. However, having identified that the 1st appellant met the requirements of section 117B (6), the conclusion that the public interest in immigration control was outweighed by the family life considerations and that refusal was disproportionate applied. He therefore allowed the appeals.

The appeal before the Upper Tribunal:

32. Permission to appeal was granted by First-tier Tribunal Judge Wilson on the 1 April 2020.
33. Before the Upper Tribunal, Mr Walker relied upon the written grounds. In oral submissions he stated that this was a “narrow point” relied upon by the respondent.
34. The written grounds assert that the tribunal failed to give adequate reasons for its decision. In his oral submissions Mr Walker submitted that at [23] the judge had not given reasons why there was an “exceptional relationship” between the 1st appellant and X by reference to the circumstances in which the 2 families lived. He further submitted that there was no adequate reasoning that it was in the child’s best interests for the 1st appellant to stay in the UK.
35. The written grounds submit that the judge found that R-LTRP read with EX1 (which set out the conditions for a grant of limited leave to remain as a parent) appeared to apply to the 1st appellant with reference to X with who he found had a genuine subsisting parental relationship.
36. The grounds assert that the finding is inadequately reasoned and not supported by the evidence and that it was unclear how the tribunal reached that finding and in doing so the best interest argument is “weakened and it is submitted that it would be proportionate to remove, and it is a fair balance with the needs of immigration control.”
37. It is further submitted that the FtTJ found that it was in X’s best interests for the 1st appellant to remain in the UK at paragraph 23. The respondent submits that the

tribunal had failed to adequately reason why it would be in X's best interests as the contact between them is occasional and they do not live together in the same house or the same town. The appellant pays for his school dinners et cetera arguably that does not amount to a parental relationship. It was further argued that it was "difficult to say that could not be maintained if the 1st appellant went back to his home country, he could continue to support if he chose to do so. In making these findings the tribunal has erred in law."

38. Mr Broachwalla on behalf of the appellant did not provide any written submissions. However, in the documentation before the tribunal there was a skeleton argument submitted on behalf of the appellant by counsel Mr Murphy who had represented the appellants at the FtT hearing (see document dated 16 June 2020). The skeleton argument was provided in light of the directions given by UTJ Canavan which required the parties to consider whether there was a need for an oral hearing and to provide any further submissions.
39. I shall summarise at written document. It submits that the judge found the appellants and the witnesses to be credible and that the decision was a "succinct and well-reasoned decision disclosing no error on public law grounds".
40. The skeleton argument sets out that the factual findings made were as follows:
 - (1) the 1st appellant "formed a close bond" with his daughter,
 - (2) the 1st appellant's daughter is a British citizen,
 - (3) she came to stay with him in his new partner in 2014 with the 1st appellant's ex-partner went for an extended stay to Ghana,
 - (4) during school holidays she comes to stay with him and his new partner at their home,
 - (5) during school term the 1st appellant goes to visit X,
 - (6) the 1st appellant sends money to X and to help with the upkeep.
41. It is submitted that in the light of those factual findings, the FtTJ properly directed himself that the best interest of the children were a "primary consideration" (paragraph 10). The judge at paragraph 23 directed himself to the immigration history of the adult appellants but correctly identified that their "sins" would not preclude a finding that the removal of the 1st appellant would breach section 117B (6). It is further submitted that having found the appellants' witnesses to be credible, he was "bound to conclude that the 1st appellant did have a parental relationship with a qualifying child"
42. Mr Broachwalla submitted on behalf of the appellants that there was no error of law disclosed in the decision which was a well-reasoned decision having made factual findings in favour of the appellants and having concluded that the 1st appellant had a genuine subsisting parental relationship with the qualifying child.

43. By reference to the decision, Mr Broachwalla submitted that the FtTJ had found all the witnesses to have given credible evidence and consistent with the documentary evidence and that he accepted that separating the 1st appellant from the qualifying child would interrupt the close bond. He pointed to the nature of the relationship and that it has been accepted that X had lived with the 1st appellant whilst her mother was in Ghana. In addition, the judge was entitled to take into account that they lived together during school holidays and vacations and that he would visit during the school holidays in the alternative. There was other evidence including photographs of the parties (in the supplementary bundle) and that the 1st appellant also provided financial support for X. He submitted this was all consistent with the evidence provided.
44. He submitted that whilst the structure of the decision could have been better, the question was whether the appellant had a genuine subsisting parental relationship and the judge found that he did have such a relationship.
45. The FtTJ did give reasons for this decision having cited the decision of RK at paragraph [18] and gave reasons at [19].
46. Mr Broachwalla pointed to the evidence that was in the bundle, including the witness statements from each of the adult appellants, from the mother of X and the witness statement from X herself. Reference was made to the financial outgoings referable to X in the bundle set out at pages 37 - 50 and also from pages 51 - 65. Reference was made to the photographs showing the closeness of the relationship between the appellant and X and having found the 1st appellant's evidence credible along with the mother of X, he was entitled to accept that as the factual background.
47. It was further submitted that the evidence that he played an active role in decisions for X was supported by the evidence that attended parents' evenings and had pay for school trips and other financial outgoings.
48. He submitted that the grounds were a disagreement with the decision reached but did not demonstrate any error of law. He pointed to the drafting of the grounds where the respondent had set out the circumstances and that "arguably that does not amount a parental relationship" and that the use of the word "arguably" was insufficient to demonstrate an error of law.

Discussion:

49. Having had the opportunity to hear the oral submissions of the parties in the light of the decision of the FtTJ and the evidence that was before him, I am satisfied that the FtTJ did not err in law in the way that the respondent has advanced in the grounds.
50. Mr Walker submitted on behalf of the respondent that it was a "narrow point" that was advanced on behalf of the respondent. His emphasis and that of the grounds is based upon the submission that the FtTJ gave inadequate reasons for finding that the

appellant has a “genuine subsisting parental relationship” with X and that it was unclear how the tribunal reached the finding.

51. In this regard it is also submitted that whilst the FtTJ found that it was in X’s best interests for the 1st appellant to remain in the UK at [23] the tribunal failed to adequately reason why it would so be when their contact is occasional and that they do not live together in the same house or the same town, and he pays for her school dinners et cetera but that does not amount to a “parental relationship”.
52. As Mr Broachwalla submitted, the grounds advanced on behalf of the respondent are a “reasons challenge”.
53. Following Budhathoki (reasons for decisions) [2014] UKUT 341 (IAC) judges need to resolve the key conflicts in evidence and explain in clear and brief terms their reasons for preferring one case to the other so that parties can understand why they have lost. Reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by a judge: Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC), at [10]. In my judgment the FtTJ made a clear decision in which adequately reasoned findings were made and in accordance with the evidence.
54. The FtTJ had the opportunity to see and hear the witnesses give oral evidence before the tribunal. This was an appeal that was opposed and therefore the witnesses before it were subject to cross-examination. Having heard the evidence and considered it in the light of the documentary evidence, including the witness statements and evidence in support, the FtTJ concluded at [5] that “I found the witnesses to be credible and consistent with the various supporting documentation” and then from paragraphs [6] –[9] set out his factual findings from that evidence. The factual findings included the length of time that the 1st appellant and R lived together from 2006 until 2009 and that he had a “close bond” with X and that after separating from each other, he continued in contact with X. The type of contact that has been taking place is described at paragraph [9]; that X had stayed with him for extended periods of time when her mother went to Ghana in 2015/2016; after X moved to a different area, the 1st appellant help them move and that since then and during school holidays X has stayed at the 1st and 2nd appellants home and that contact had taken place during school terms with either the 1st appellant visiting X or vice versa. In addition, the 1st appellant makes financial contributions to her well-being by sending money to help with the upkeep, pays for school dinners, buys clothes. This was supported by the documentation in the appellant’s bundle. The FtTJ also found as a fact that X’s mother was “very supportive” of the contact between X and the 1st appellant and that even though she was heavily pregnant, she travelled with her daughter to give evidence in support of the appeal.
55. None of those factual findings are challenged in the grounds. At its highest, it is argued that the tribunal has failed to adequately reason why the contact between the appellant and X amounts to a parental relationship.

56. In my judgement those factual findings were open the FtTJ to make on the evidence before him which he plainly accepted as credible evidence which was consistent with the documentary evidence contained in the bundle. The evidence of X's mother was supportive of the nature of the relationship between X and the first appellant as was the written statement for X herself. There was evidence of arrangements for contact between X and the appellant which included contact during the school vacation periods and on weekends and there had been reference in the evidence to extend periods of time where X would live with the first appellant including periods of time when her mother was studying and when in Ghana.
57. In the light of those factual findings, the FtTJ undertook an assessment of whether the appellant had demonstrated that there was genuine and subsisting parental relationship. Whilst the FtTJ appeared to state that the Rules were met, at [19] the FtTJ correctly identified that the same result was reached by applying s117B (6).
58. The statutory provisions contained in section 117B (6) were at the forefront of the issues in this appeal, which states that the public interest will not require the person's removal where that person has a genuine and subsisting relationship with a 'qualifying child', and it would not be reasonable to expect the child to leave the United Kingdom.
59. Section 117B(6) of the 2002 Act provides:
- (6) 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."
60. The term "qualifying child" is defined in section 117D(1) in these terms:
- "qualifying child' means a person who is under the age of 18 and who -
 - (a) is a British citizen, or
 - (b) has lived in the United Kingdom for a continuous period of seven years or more..."
61. There is no dispute that the relevant child X is a "qualifying child" in the light of her status as a British Citizen and being under 18 years of age.
62. When considering the issue of whether there was a "genuine and subsisting parental relationship" the FtTJ addressed this in the light of the decision in RK (set out at [18]). Whilst there has been more recent jurisprudence than this, I am satisfied that the FtTJ properly addressed the substance of those decisions in the context of the factual evidence before him.

63. In Secretary of State v AB (Jamaica and AO (Nigeria)) [2019] EWCA Civ 661, the Court of Appeal set out the relevant considerations as follows:

“86. Under Ground 4, Ms Patry's primary submission is that the meaning of "a genuine and subsisting parental relationship with a qualifying child" in section 117B(6)(a) has the meaning that there must be some element of direct care for the child by the relevant person. In support of that submission Ms Patry relies on the decision of this Court in *Secretary of State for the Home Department v VC (Sri Lanka)* [2017] EWCA Civ 1967, in which the main judgment was given by McFarlane LJ.

87. In the alternative, Ms Patry submits that the conclusion to which the UT came was one that was not reasonably open to it on the facts before it.

88. I have already referred to the judgment of UTJ Plimmer in *SR (Pakistan)*. In that case UTJ Plimmer also addressed the question of whether there was a "genuine and subsisting parental relationship", as required by para. (a) of section 117B(6). At para. 35 UTJ Plimmer said:

"The assessment of whether there is a 'genuine and subsisting parental relationship' for the purposes of EX.1 and section 117B(6)(a) is different in form and substance to whether a parent has taken an 'active role' in the child's 'upbringing' for the purposes of R-LTRPT1.1. It is possible to have a genuine and subsisting parental relationship with a child, particularly in cases where contact has only recently resumed on a limited basis, but for that relationship not to include a parent playing an active role in the child's upbringing. The fact that SR has not been involved in making important decisions in A's life does not necessarily mean that he has not developed a genuine and subsisting relationship. The nature and extent of that relationship requires a consideration of all the facts referred to RK at [42]. The child's age is also likely to be a relevant factor."

89. Like UTJ Plimmer I also have found helpful the judgment of UTJ Grubb in *R (RK) v Secretary of State for the Home Department* [2016] UKUT 00031 (IAC). Although the facts of that case were quite different, as they concerned a grandmother and whether she needed to have "parental responsibility" for a child, what UTJ Grubb said at paras. 42-43 contains an analysis of the concept of "parental relationship" with which I would respectfully agree:

"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 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 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.'"

90. Returning to the case of *SR (Pakistan)* I would also respectfully agree with what was said by UTJ Plimmer at para. 39:

"There are likely to be many cases in which both parents play an important role in their child's life and therefore both have subsisting parental relationships with the child, even though the child resides with one parent and not the other. There are also cases where the nature and extent of contact and any break in contact is such that although there is contact, a subsisting parental relationship cannot be said to have been formed. Each case turns on its own facts."

64. On the factual findings made by the FtTJ, he reached the conclusion that the appellant did take on parental responsibility as evidenced by the nature of his relationship and his ongoing contribution to X's upbringing and development. Whilst the relationship was not characterised by any legal order, it as a situation that had been the de-facto position from the time they had lived together and had continued post-separation and was a position that was supported by X's mother. The nature of the relationship was set out in the evidence of her mother and X and evidence was given as to the continuing contact for extended periods of time, the active steps undertaken by the appellant including attendance at parents evening and the financial assistance provided for her upkeep. There was no suggestion in the evidence that the extended periods where X stayed with her father were by way of him acting as a carer who did not "step into the shoes of a parent" (see description above at [89] of AB (Jamaica))but did so in the exercise of his responsibility

The application of S117B(6) 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 and one that was undertaken by the FtTJ. In the light of the factual findings made, it has not been demonstrated that the FtTJ was in error in reaching the conclusion that there was a genuine and subsisting parental relationship with X.

65. The grounds do not seek to challenge the remainder of S117B(6) which refers to the (b) it would not be reasonable to expect the child to leave the United Kingdom." The

FtTJ addressed this at [19] based on the circumstances of X; that she was born in the UK, she was a British Citizen, was settled in school and living with her mother who herself is settled in the UK. The FtTJ was plainly aware of the poor immigration history of both the adult appellants set out in the summary of their immigration history and expressly at [23]. As the FtTJ stated, both appellants were in the UK unlawfully and in his view “ had little to recommend them”. It is plain that he did not reach the conclusion with any enthusiasm. However as explained in Runa v SSHD[2020] EWCA Civ 514, under section 117B(6) there is no room for such an inquiry to take account of the conduct of the parents: that is the effect of the decision of the Supreme Court in KO (Nigeria), which overruled the earlier decision in MM (Uganda) v Secretary of State for the Home Department [2016] EWCA Civ 617; [2016] Imm AR 954 and in that respect approved what had been said by Elias LJ in MA (Pakistan) (as that case was known before it *became KO (Nigeria)* when it went to the Supreme Court), at para. 36.

Under section 117B(6) the only question is focussed on the child. Having found the appellant to be in a genuine and subsisting parental relationship with X and also concluding that it would be unreasonable to expect the child to leave the UK, there is no need to go on to consider Article 8(2) more generally including the adverse immigration history of the appellants.

66. The respondent does not challenge the decision made in respect of the other appellants. Against the factual background set out by the FtTJ, it was open to the FtTJ to allow the appeals of the other family members. As the FtTJ stated, if the second appellant and the first appellant’s child were removed to Ghana, it would entail their separation from the first appellant and would “ create a situation in which E was forced to separate from them or forced to leave them, contrary to the provisions of S117B(6) and that these were the “unjustifiably harsh consequences” that applied.
67. I remind myself that an appeal to the tribunal may only lie where there is an error of law. It is trite law that many judges will approach the same set of facts very differently. The mere fact that one judge adopts a relatively favourable interpretation of the evidence they have heard does not necessarily render that finding irrational, simply on the basis that other judges, even many other judges, may have approached the same question in a different manner.
68. I also remind myself of the observations of Floyd LJ in UT (Sri Lanka) v SSHD [2019] EWCA Civ 1095 at paragraph 19:

“19. I start with two preliminary observations about the nature of, and approach to, and appeal to the UT. First, the right of appeal to the UT is “on any point of law arising from a decision made by the [FTT] other than an excluded decision”: Tribunal, Courts and Enforcement Act 2007 (“the 2007 Act”), section 11 (1) and (2). If the UT finds an error of law, the UT may set aside the decision of the FTT and remake the decision: section 12 (1) and (2) of the 2007 Act. If there is no error of law in the FTT’s decision, the decision will stand. Secondly, although “error of law” is widely defined, it is not the case that the UT is entitled to remake the

decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter. Baroness Hale put it in this way in AH (Sudan) v SSHD at [30]:

“Appellate courts should not rush to find such misdirection simply, because they might have reached a different conclusion on the facts or express themselves differently.”

69. In my judgement it has not been demonstrated by the respondent that on the particular factual circumstances of the appellants’ cases and on the evidence before the FtTJ that the decision was either inadequately reasoned or that he failed to apply the correct legal principles in substance. For those reasons, I am satisfied that the decision of the FtTJ did not involve the making of a material error on a point of law so that the Upper Tribunal should set aside the decision. I therefore dismiss the appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision shall stand.

Signed

Date: 1 June 2021

Upper Tribunal Judge Reeds

Upper Tribunal Judge Reeds

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email