



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-001627

First-tier Tribunal No: HU/52242/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 22 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**PAT ADE AYEBOLA**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Corban of Corban Solicitors (Via Microsoft Teams)  
For the Respondent: Mr Gazge, a Senior Home Office Presenting Officer.

**Heard at Birmingham Civil Justice Centre on 25 April 2023**

**DECISION AND REASONS**

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge Elliott 'the Judge'), promulgated following a hearing at Birmingham on 15 November 2021, in which the Judge dismissed the appellant's appeal against the refusal dated 21 May 2021 of his application for leave to remain in the United Kingdom on the basis of his family life with his daughter.
2. The Judge noted the appellant is a citizen of Nigeria born on 17 March 1969 who entered the UK lawfully in February 2007 with entry clearance as the spouse of a British citizen. His leave on that basis was extended to expire on 31 March 2011.
3. On 30 March 2011 the appellant made an in-time application for further leave to remain in the UK on the basis of his relationship with his child which was granted to 17 August 2012. The appellant's marriage broke down and a further application on the same basis was refused against which the appellant unsuccessfully appealed. The appellant became appeal rights exhausted on 4 August 2014.
4. Following the resolution of the issue of his contact with his daughter through the Family Court in March 2015, the appellant applied for leave to remain on the basis of his family and private life and, although the application was refused under the Parent Route of Appendix FM, the respondent was satisfied the appellant had a

genuine and subsisting parental relationship with his daughter, who at that time was a minor, and so granted the appellant leave outside the Rules for a period of 30 months, to expire on 26 December 2017.

5. On 23 December 2017 the appellant applied for further leave on the basis of family and private life, which was granted, valid to 10 October 2020.
6. On 2 November 2020 the appellant made a further application for leave to remain on the same basis as his 2017 application which was refused on 21 May 2021, which is the subject of this appeal.
7. The appellant challenged the refusal on the basis that he been granted leave to remain as the parent of a qualifying child not only when his daughter was a minor but also after she attained the age of 18, which created a legitimate expectation that any subsequent applications will be granted on the same basis, and that the refusal on the ground his daughter was an adult was inconsistent with previous decisions.
8. The Judge's findings are set out at [55] of the decision under challenge.
9. The Judge noted the appellant's claim he met the requirements of the Immigration Rules but did not find support for the appellant's reasoning in any of the provisions relied upon or guidance. No reference was made to any policy that assisted the appellant.
10. The Judge noted at [60] that it now appears that the appellant's daughter is in work, is not dependent upon the appellant for financial support, and that although they have contact with each other they had not met in person since 2018. At [61] the Judge writes:
  61. To all intents and purposes the Appellant's daughter appears to be living a life independently from the Appellant and there is little or no evidence about her relationship with her mother. I find that the Appellant has not demonstrated that he meets the requirements of the Immigration Rules for indefinite leave to remain as a parent.
11. The Judge considered the assertion by the appellant that he was given a legitimate expectation that any future grant of leave would succeed but found at [62] that it was clear from the wording of the grant of leave in 2018 that he would have to continue to meet the requirements of the Immigration Rules at the time of all future applications and that no such expectation arose.
12. The Judge did not find very significant obstacles to the appellant integrating back into Nigeria for the reasons set out at [63].
13. The Judge examined the appellant's claim from [64] in relation to Article 8 ECHR, before concluding at [76]:
  76. Therefore, I find upon consideration of all the evidence, that the private interests of the Appellant do not outweigh the strong public interest in the maintenance of immigration controls and so dismisses appeal on human rights grounds. I am satisfied therefore that the Respondent has demonstrated that the interference with the Appellant's Article 8 rights is proportionate in all the circumstances.
14. The appellant sought permission to appeal which was originally refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge O'Callaghan on 14 July 2022, albeit in reserved terms.

### **Discussion and analysis**

15. The appellant's grounds of appeal asserted the Judge erred in law in failing to consider that the respondent's decision to refuse the application created what was described as an obituary situation, as having been previously granted leave

when the appellant's daughter was an adult yet refusing the appeal when the daughter was an adult, meant there are conflicting decisions on the same facts. The grounds argue that the principle of legitimate expectation was relevant for the Judge to consider but failed to do so.

16. The grounds assert the Judge failed to take into account the provisions of Appendix FM, section 3.2 of the Immigration Rules in relation to exceptional circumstances, did not undertake a balancing exercise under Article 8 properly or at all, claims the Judge failed to give weight to the fact the appellant and his child had never been separated and that although they live in separate households they continue to communicate and, it is claimed, meet on a regular basis, except during the period of the pandemic 2020-2021. The grounds also argue the Judge failed to give proper weight to the fact there was family life between the appellant and his child and that they continue their family life here. The grounds also assert the Judge did not properly consider paragraph 276 ADE in relation to whether there are very significant obstacles.
17. The Judge found that the appellant could not succeed under the Immigration Rules. On the evidence before the Judge that is sustainable finding.
18. In a human rights appeal the evidence is considered at the date of the hearing at which point the appellant's daughter, who was born on 13 June 1997, and who is now aged 26, was not a child. Reference in the grounds therefore to the application of the Rules so as they relate to a child has no merit.
19. It is also important to note that when leave was previously applied for and granted the appellant's daughter was at university studying and not independent. It appears from the information provided by the appellant at the hearing, in response to a question from the bench, that his daughter left university in May 2020.
20. The key finding of the Judge is that there has been a material change in the circumstances of the appellant's daughter which is not related necessarily to her attaining the age of 18. The key finding by the Judge in this regard is that on the evidence considered the daughter was now independent.
21. It is accepted family life recognised by Article 8 can exist between a parent and an adult child provided the required degree of dependency is made out on the evidence. That is a question of fact. The Judge finds that the relationship between the appellant's daughter, in light of his daughter's situation, had materially changed from that which prevailed when the earlier applications for leave were made, which is a sustainable finding. Even if there is de facto family life as there is indirect and direct contact, the finding of the Judge that family life recognised by Article 8 ECHR was not made out is a sustainable finding.
22. In relation to the legitimate expectation argument, the Judge clearly considered this and found that there was insufficient evidence to support the appellant's claim, and that the previous grant of leave in 2018 specifically stated that for a further grants on similar terms it was necessary for the appellant to be able to demonstrate that he could satisfy the requirements of the Immigration Rules, which he could not on the facts as found by the Judge.
23. At its most basic, a legitimate expectation claim is based on the assumption that, where a public body states that it will or will not do something, a person who has reasonably relied on that statement should be entitled to enforce it; if necessary, through the courts. For a legitimate expectation to arise, the public body's statement must be clear, unambiguous and without qualification. Interference with legitimate expectations may be justified on public policy grounds.
24. In this case it is not made out that such a clear and unambiguous statement devoid of relevant qualification was made. In fact the evidence shows the opposite. Firstly no statement or promise was made that if the appellant applied

for further leave it will be granted. The only reference referred to by the Judge appears to be statement in the 2018 decision that leave might be granted if there had been no material change to an applicant's circumstances. In this case there had been such a change in that although still over the age of 18 the appellant's daughter was no longer dependent.

25. Reliance upon guidance does not assist the appellant as that does not form a basis for sustaining a claim that any guidance will guarantee the application will be successful solely on the basis that his daughters is still over the age of 18, irrespective of what had happened in relation to her personal circumstances.
26. As the appellant fails to cross even the first hurdle in establishing a legitimate expectation claim, he has not made out the Judge erred in law in not finding that such existed, such that the refusal of the application for clearance was unlawful.
27. I find the Judge considered the evidence with the required degree of anxious scrutiny. The Judge was clearly alive to the points an issue. The Judge has made a number of findings in the determination which are supported by adequate reasons. The weighty to be given to the evidence was a matter for the Judge.
28. Whilst the appellant disagrees with the outcome and wishes to stay in the United Kingdom the grounds fail to make out legal error material to the decision to dismiss the appeal, sufficient to warrant the Upper Tribunal interfering any further in this matter.

### **Notice of Decision**

29. No legal error in the determination of the Upper Tribunal has been made out. The determination shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**2 May 2023**