IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003811

First-tier Tribunal No: HU/58383/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 October 2024

Before

UPPER TRIBUNAL JUDGE DANIEL SHERIDAN

Between

ADENIYI PETER BAMIDELE
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Claire, Counsel instructed by Brightway Immigration & Asylum Practitioners

For the Respondent: Ms Nwachuku, Senior Home Office Presenting Officer

Heard at Field House on 28 October 2024

DECISION AND REASONS

Failure by Brightway Immigration & Asylum Practitioners to comply with directions and my decision to proceed

1. The appellant's representatives were directed to provide a composite electronic bundle complying with the President's Guidance on the Format of Electronic Bundles in the Upper Tribunal (IAC). Instead, 15 separate PDFs were provided, without a clear index and without it being clear which documents were before the First-tier Tribunal. The way in which documents were submitted/uploaded by the appellant's representatives falls well below the standard expected of representatives who appear in this Tribunal.

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2. I am grateful to Ms Nwachuku who identified how I could locate the bundle that was before First-tier Tribunal on the First-tier Tribunal's database. Mr Claire did not have this bundle before him. In the light of this, I stated that I was agreeable to an adjournment in order for the appellant's representatives to prepare and submit a proper bundle in accordance with the applicable guidance such that all parties will be working from the same bundle. Mr Claire stated that he wished to proceed.

3. Ultimately, I was not concerned about the fairness of proceeding without Mr Claire having the same bundle as it was common ground between Mr Claire and Ms Nwachuku (after considerable time was spent searching through different bundles and parts of bundles that had been submitted) that the only evidence as to the relationship between the appellant and his son that was before the First-tier Tribunal was contained in the two very brief witness statements of the appellant and the two very brief witness statements of his wife. Both Mr Claire and Ms Nwachuku had access, through the documents available to them, to these statements.

Background

4. The appellant is a citizen of Nigeria who lived in the UK prior to 2008 when he was removed. He has a wife and son in the UK. His son, born in December 2005, is severely disabled.

5. The appellant applied for entry clearance on the basis of his family life with his son. The application was refused because the respondent did not accept that several eligibility requirements for such an application were satisfied. Amongst other things, the respondent stated that there was a lack of evidence of any active role by the appellant in his son's upbringing.

6. The appellant appealed to the First-tier Tribunal where his appeal came before Judge of the First-tier Tribunal Stedman ("the judge"). In a decision dated 30 May 2024, the judge dismissed the appeal. The appellant is now appealing against this decision.

Decision of the First-tier Tribunal

7. The judge decided the case without a hearing. His decision to do so is not challenged.

8. The judge found that the requirements of the Immigration Rules were not satisfied. Amongst other things, the judge found that there was a "demonstrable absence of evidence" of the relationship between the appellant and his son. The judge stated in paragraph 11 of the decision that he knew "nothing of the relationship between the appellant and his son" and that the witness evidence did not address the relationship between the appellant and his son.

9. With respect to article 8 outside the Rules, the judge found in paragraph 12 that there was "little if no evidence at all to support family life between the appellant who lives in Nigeria and his British son in the UK". Having found that family life for the purposes of article 8 had not been engaged by the relationship between the appellant and his son, it was not necessary for the judge to proceed to consider whether interfering with their relationship would be disproportionate. However, the judge (briefly) did so; finding (in paragraph 13) that "the factors in favour of the appellant being granted entry clearance on article 8 family life grounds fall very short of the public interest element in this appeal."

10. The judge did not make a finding on the best interests of the appellant's son. However, he did state, in paragraph 15, that:

> In reaching my overall conclusion I have had regard to the interests of the child (who is now an adult) and find that there would not be an adverse impact on his mental health as claimed given the pattern of his life has been one in which his father has for the most part been absent.

Grounds and grant of permission

11. The grounds make several submissions, which I would summarise as follows:

    a. Submission 1: The judge failed to consider the best interests of the appellant's son.

    b. Submission 2: The judge failed to consider the personal circumstances of the appellant and his son.

    c. Submission 3: The judge failed to consider the medical evidence about the condition of the appellant's son.

12. Two additional points are made in the grant of permission:

    a. Submission 4: the judge stated that he was unable to find any document in the bundle confirming that the appellant's son was unable to travel when, in fact, such a document existed.

    b. Submission 5: The judge gave disproportionate weight to the present state of the relationship between the appellant and his son without considering the future development of the relationship.

Analysis

13. The difficulty with the appellant's case before the First-tier Tribunal was that he submitted virtually no evidence about his relationship with (and the role he plays in the upbringing of) his son. I asked Mr Claire to identify all of the evidence before the First-tier Tribunal relevant to this and all that he could point to were the extremely brief statements drafted by the appellant and his son's mother, none of which include any description of the appellant's role in his son's life. There could be multiple ways in which the appellant plays a role in his son's life, despite his son's disability preventing communication by phone or email. For example, it could be the case that the appellant regularly speaks to, or emails, his son's mother about what is happening in his son's life and/or that he is involved in making decisions relevant to his son's life. It could also be that he sends money to his son's mother. However, the witness statements say nothing about any role played by the appellant. Given the complete absence of information about the relationship between the appellant and his son (and role played by the appellant in his son's life), the judge was plainly entitled to find that it had not been established that the appellant and his son have a family life that engages article 8. Indeed, as the burden of proof was on the appellant, it is difficult to see how, given the paucity of evidence before the First-tier Tribunal, any judge could have concluded otherwise.

14. I now turn to the submissions in the grounds.

15. Submission 1. The best interests of a child is a primary consideration in a proportionality assessment under article 8. However, it is only necessary to undertake a proportionality assessment where a family (or private) life engages article 8. In this case, for the reasons explained in paragraph 13 above, it was open to the judge to find that it had not been established that the appellant and his son have a family life engaging article 8. It was therefore not necessary to consider the best interests of the appellant's son.

16. Submission 2: There is very little said in the decision about the personal circumstances of the appellant and his son (other than in respect of the son's disability). However, this is not a result of the judge erroneously not engaging with evidence; it is a result of the paucity of evidence adduced.

17. Submission 3: The judge considered the evidence about the appellant's son's health, and accepted that he is severely disabled as claimed. There is therefore no merit to the submission that the evidence was overlooked in respect of the son's condition.

18. Submission 4: The judge mistakenly stated that there was no evidence corroborating that the appellant's son is unable to travel to Nigeria. However, this is irrelevant for two reasons, either of which is sufficient to demonstrate that this ground lacks merit. First, the judge stated that he in any event accepted that travelling abroad would pose significant challenges. Second, the judge found that the relationship between the appellant and his son does not engage article 8, which means that it is irrelevant that the appellant's son cannot travel to Nigeria to visit the appellant.

19. Submission 5: the judge needed to decide the case on the basis of the evidence before him; not speculation about what might happen in the future. As there was an almost complete lack of evidence, it was open to the judge to find that article 8 was not engaged, for the reasons explained in paragraph 13.

20. The grounds do not identify an error of law in the decision and therefore the appeal is dismissed.

Notice of Decision

The decision of the First-tier Tribunal stands and the appeal is dismissed.

D. Sheridan
Upper Tribunal Judge Daniel Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29.10.2024