



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/07537/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 7 December 2017

**Decision & Reasons
Promulgated
On 25 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MR ADEKUNLE OLAYINKA ADEOLA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Dingley, Counsel, instructed by London Solicitors
For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant in this case is a citizen of Nigeria who arrived in the UK on a visit visa on 28 February 2014 and overstayed. The appellant applied in December 2015 for leave to remain in the United Kingdom with his sponsor, who has indefinite leave to remain in the UK, and their child. That application was refused by the respondent in a decision dated 22 February 2016. In a decision and reasons promulgated on 24 August 2017, First-tier Tribunal Judge Mozolowski dismissed the appellant's appeal on all grounds.

2. The appellant appeals to the Upper Tribunal on the following grounds:
 - (1) Ground 1. The judge failed to have regard to a letter dated 18 July 2017, which was attached to the permission to appeal from a Ms Joanne Jackson-Louis an Early Help Worker at the Royal Borough of Greenwich Children's Centre. It was submitted that the letter was not in the appellant's bundle but if it was not before the judge it was a failure on the part of the previous representatives to produce it, rendering the hearing procedurally unfair. If it was before the judge then it was submitted that the judge erred in law in failing to consider the document and the appellant relied on **MM (unfairness - E&R) Sudan [2014] UKUT 00105 (IAC)**.
 - (2) Ground 2. It was submitted that the judge erred in her findings in relation to the appellant and the sponsor, in finding that they did not cohabit, and it was submitted that this was the wrong approach, when the Tribunal ought to have assessed whether there was a genuine and subsisting relationship.
 - (3) Ground 3. It was submitted that the judge erred in the consideration of Section 117B and the appellant relied on **MA (Pakistan) & Others v Upper Tribunal (Immigration and Asylum Chamber) & Anor [2016] EWCA Civ 705** submitted that in the absence of criminality it would not be reasonable to expect a British child to leave the UK where there is a genuine and subsisting parental relationship.
3. For the reasons set out below I am not satisfied that any error of law was disclosed.

Error of Law Discussion

4. The only ground pursued before me by Mr Dingley was Ground 1 in relation to the document which it was alleged was before the First-tier Tribunal. Although Mr Dingley submitted a skeleton argument and a bundle of further documents he accepted that this was in relation to any remaking of the decision if an error of law was found.
5. Mr Dingley accepted however, that there were significant difficulties in relation to the alleged document. The appellant had produced an e-mail from his former representative, who represented the appellant at the time of the appeal before the First-tier Tribunal. This e-mail, dated 25 October 2017, noted that the letter from Ms Joanne Jackson-Louis an Early Help Worker at the Royal Borough of Greenwich was received by the representatives on 18 July 2017. The representatives, James Solicitor.com indicated further that:

“The first thing our Counsel did at the hearing on 21 July 2017 was to serve the Tribunal Judge with the letter from the Early Help Worker. The defendant (sic) was not represented at the hearing and could not therefore be served with the letter.”

The e-mail went on to state that the former representative, in order to assist, would review and sign a draft witness statement (if provided by the new representatives) but that he would not accede to a future request for assistance until the appellant complied with the arrangement to pay outstanding fees.

6. I also had before me the letter in question. In addition the appellant had prepared an additional witness statement where it was stated that his then solicitor asked him to take the letter to the First-tier Tribunal at the date of hearing and “give the same to the barrister”. The appellant went on to state that he gave the letter to his barrister and that “she placed the letter before the First-tier Tribunal Judge during the hearing on 21 July 2017. However the Honourable Immigration Judge did not accept it because it was not printed in colour. She also commented that the letter does not have a letterhead. Further, the respondent was not represented at the hearing and could not, therefore, be served with the letter.”
7. The letter in question from Ms Jackson-Louis dated 18 July indeed does not have a letterhead and appears to be a relatively poor photocopy. The letter confirms details in relation to the appellant and his son, including that the appellant brought his son to clinic to be weighed and that the appellant was present at four out of nine meetings that Ms Jackson-Louis had with the child and the child’s mother and that he was “a constant presence” in his son’s life.
8. The Judge of the First-tier Tribunal made no reference to any letter being produced either in her Record of Proceedings or in the decision and reasons. The judge specifically noted that the documents before her were the appellant’s bundle of documents and the respondent’s bundle of documents. The judge made negative credibility findings on a number of matters including in relation to the lack of adequate evidence in relation to the claimed role that the appellant played in his son’s life. There were further findings in relation to difficulties in the witness statements of the appellant and the sponsor (the judge noting that they were too similar and lacking in detail). The judge specifically found, at [18], that although it was claimed that the appellant remained at home whilst the sponsor went to work and the appellant did various household tasks and took the child to immunisations and to nursery, “immunisations are not a frequent event even in a baby’s life but even if the appellant went to the immunisation clinic, I would have expected this to have been recorded by the doctor or health visitor. There is no letter of support about this.”
9. The judge went on to find that there were other letters that the judge felt ought to have been available, including from the child’s nursery, from health visitors, neighbours and friends etc. Whilst the judge made no reference to the absence of a letter from an early help worker, it is notable that the letter from Ms Jackson-Louis refers to the appellant taking the child to a clinic whilst the judge specifically notes the absence of evidence from someone confirming that the appellant took the child to the clinic, albeit that this was an immunisation clinic (and Ms Jackson-Louis refers to

the appellant's child being weighed at a clinic rather than an immunisation clinic specifically).

10. Mr Dingley, quite properly in my view, conceded that the appellant's witness statement evidence and the e-mail from the previous solicitor did not take the appellant's case much further and that, specifically, he submitted that as an ordinary lay person little weight could be attached to the appellant's account that the judge refused to accept the evidence. Mr Dingley accepted that there were a number of other possible explanations including that the document may have been withdrawn by Counsel for the appellant. What was notable, and Mr Dingley accepted the deficit in the appellant's case, was any evidence either witness statement or oral evidence either from the previous solicitor or, perhaps more importantly the Counsel who represented the appellant at the First-tier Tribunal. In the absence of such information it was accepted by Mr Dingley that the e-mail from the previous solicitor was of little weight, particularly when it contradicted somewhat the evidence of the appellant who said that the letter was put before the judge and the judge refused to accept it, whereas the previous solicitor merely stated that the letter was put before the judge, with no indication that it had not been accepted. Mr Dingley indicated that there were continuing difficulties in obtaining further information from the previous solicitors.
11. In light of all the circumstances, and Mr Dingley made no substantive submissions that might contradict this, I am satisfied that Judge of the First-tier Tribunal reached findings that were open to her on the basis of the evidence, that it had not been established that the appellant had a genuine subsisting relationship with either his claimed partner or his child.
12. I am further not satisfied that any procedural unfairness has been disclosed and Mr Dingley did not actively pursue the grounds cited above, accepting that it had not been established that this evidence was before the judge. I am not satisfied that **MM (unfairness - E&R)** applies in the circumstances. It cannot be said that there could be any unfairness arising in the circumstances where a particular document has not been lodged with the Tribunal, regardless of any argument as to the alleged deficiencies in the appellant's then legal representation.
13. I have already noted Mr Dingley did not pursue the remaining grounds. These amount to no more than a disagreement when the findings of the First-tier Tribunal. It could not be said that the conclusions reached by the First-tier Tribunal Judge were irrational and she reached findings that were properly open to her on the evidence produced.
14. I further note that these findings were made in the context of difficulties with the appellant's evidence including questions over credibility. The judge made a number of other findings in relation to the lack of adequate evidence of both the relationship with the sponsor and the child, including alternative findings at [21], that even if the appellant were involved in taking the child to immunisation clinic 'more would be needed to show the Appellant having a significant role in the health of the child'.

15. The decision of the First-tier Tribunal does not disclose an error of law and shall stand.

No anonymity direction was sought or is made.

Signed
Deputy Upper Tribunal Judge Hutchinson
TO THE RESPONDENT
FEE AWARD

Dated: 12 January 2018

No fee was paid or payable so no fee award is made.

Signed
Deputy Upper Tribunal Judge Hutchinson

Dated: 12 January 2018