



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/11180/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11<sup>th</sup> April 2019**

**Decision & Reasons Promulgated  
On 29 April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**ABDULLAHI [O]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr K Smyth of Counsel instructed by Kesar & Co Solicitors  
For the Respondent: Ms Jones, HOPO

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of Judge Davison made following a hearing at Hatton Cross on 19<sup>th</sup> November 2018.

**Background**

2. The appellant is a citizen of Nigeria born on 27<sup>th</sup> December 1997. He arrived in the UK as a child in 2012 to join his parents. Several applications were then made to regularise his status in the UK one in 2014 and two in 2015 all of which were unsuccessful.
3. In January 2016 the appellant's father died. His younger brother S had been born in the UK and was by this stage a British citizen. His mother

was granted leave to remain in the UK as a parent of a British child in June 2018.

4. The judge was not satisfied that the appellant would face significant difficulties on a return to Nigeria since he considered that there were family members there who would be able to support him and that they were in contact with him. He said that since the appellant had lived in Nigeria until the age of 14 there would not be obstacles to his reintegration. So far as his relationship with his younger sibling was concerned, the bond which he had developed with him, although strong, was established at a time when his status in the UK was precarious.
5. On that basis he dismissed the appeal.

### **The Grounds of Application**

6. The appellant sought permission to appeal on the grounds that the judge had failed to take into account the best interests of the appellant's younger brother S. Despite evidence from both the appellant and S, he made no reference to them in the determination. It had been submitted that the appellant had a parental relationship with his brother and by failing to take into account that relationship the judge had erred in law.
7. Permission to appeal was granted by Judge Saffer for the reasons stated in the grounds on 4<sup>th</sup> January 2019.
8. At the hearing Ms Jones for the respondent accepted that the judge had erred in law and that the decision would need to be remade.
9. The decision of Judge Davison is set aside. The judge erred in law in that he failed to take into account a relevant consideration namely the submission that the appellant was in a quasi-parental relationship with his younger brother following the death of their father.
10. It was agreed between all parties that the decision could be remade and a brief period of time was given so that everyone could prepare for the hearing.

### **The Evidence**

11. The appellant gave oral evidence. He confirmed that the contents of his witness statement were true. He said that he would not have any support from his family in Nigeria if he were to be returned. His grandmother is very frail and his sister, who looks after her, has a family of her own to look after and is not financially stable. He is not in touch with his two older brothers. He acknowledged that when his father died his body was taken back to Nigeria and he thinks that he was buried near his grandmother's house. He denied speaking to his siblings but said that he thought that his mother was in contact with them.
12. He said that he was very close to his younger brother S. He gave him a great deal of support when their father died and this has made their relationship very strong. His brother phones him all of the time and he is the person who looks after him and makes sure that he is okay. He wants

his brother to be proud of him and to be a good mentor. His mother is very depressed and does not sleep and has chest pains and leg pains which makes it hard for her to look after S, who is undergoing counselling at school.

13. In his statement he gave details of the private life which he enjoys in the UK which includes his relationship with his girlfriend and his work with his mentor who is a designer and assists him with his photography.
14. S, who is now 11 years old, also gave evidence. He said that the appellant is like a father figure to him. He helps him when he is in need and cares and supports him in his education. When he is sad and upset, if it was not for him he would have no one to relate to or to open up to. He would feel lonely, distraught and heartbroken if he was not there. Losing his father was the most painful experience he has ever dealt with and his older brother is the only one who could understand him and comfort his mother. His mother cares for them both but his brother is the one he depends on. He wakes him up in the morning, helps him with his school subjects, makes his breakfast and follows him to the train station, when he goes to school. He helps him with his photography projects and to train for football and helps him when he is stressed out. He behaves like a father.
15. The appellant's mother [MO] also gave evidence. It was abundantly clear during the hearing that she struggles with depression. She was very tearful. She said that she lost her husband two years ago and now she looks to her son who is the only one who is able to help her. He looks after S for her. The school calls the appellant rather than her because his English is better.
16. She accepted that she had two sons and a daughter and a mother in Nigeria and that she was in contact with them. She sent money to her older sons and was clearly in close touch with her daughter. She herself works as a cleaner doing 21 to 23 hours a week.
17. The appellant's mentor also gave evidence. Mr Golding is a production designer for a creative agency and helps the appellant by giving him work on film shoots and giving him a chance to understand the professional environment. He said that he really excelled as a photographer. He knew the family reasonably well and could confirm that S really lent on the appellant giving him structure and support in his life.

### **Submissions**

18. Ms Jones relied on the reasons for refusal letter and said it was clear that the appellant's mother was in contact with her family in Nigeria who would be able to support the appellant on return. She did not accept the appellant's evidence that he had little contact with his Nigerian family.
19. She was not challenging the credibility of the evidence in relation to S. However she submitted that the evidence did not amount to a quasi-parental relationship because S had a parent namely his mother, who would support S in the UK since she had shown herself able to support her

children by sending them money to Nigeria. She observed that there was no supportive evidence from the school.

20. Mr Smyth submitted that the evidence in this case was all one way. There was compelling evidence that the appellant was in a quasi-parental relationship with S, which had not been challenged by the Secretary of State. He submitted that the appellant had not been untruthful in relation to the circumstances which he would face in Nigeria. It was not inconsistent with his mother's evidence. She was clearly in touch with the family but he said that he was not.
21. There was clear evidence from S that since the death of their father the appellant had been indispensable to him both in terms of practical and emotional support. S's best interests were overwhelmingly that the appellant should be allowed to remain. In this case there were very few countervailing factors. The appellant became 18 in December 2016 and made the present application in March 2017. There were only three months therefore when he was without leave as an adult before the application was made. He was not someone with a poor immigration history. He enjoyed a substantial private life here with a girlfriend and mentor and had good career prospects.

### **Findings and Conclusions**

22. It is not argued that the appellant can meet the requirements of the Immigration Rules. This case therefore turns on whether the appellant should be allowed to remain in the UK on Article 8 principles outside the Rules.
23. I find, like the previous judge, that the appellant sought to distance himself from his relations in Nigeria. It is clear that his mother is in contact not only with her own very elderly mother but also her adult children there. I do not consider that the appellant would face significant obstacles to reintegrating into Nigeria since I have no doubt that whilst he may not be in much contact with them his mother would ensure that his siblings gave him whatever help they were able to.
24. This appeal turns on family life and in particular the appellant's relationship with S.
25. In R (on the application of RK) v Secretary of State for the Home Department (Section 117B(6) parental relationship) IJR [2016] UKUT 00031, the Upper Tribunal found that

"It is not necessary for an individual to have a "parental responsibility" in law for there to exist a parental relationship.

Whether a person who is not a biological parent is in a "parental relationship" with a child for the purposes of Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 depends on the individual circumstances and whether the role that individual plays establishes that he or she has "stepped into the shoes" of a parent.

Applying that approach apart from the situation of split families where relationships between parents have broken down and an actual or de

facto step-parent exists it will be unusual but not impossible for more than two parents to have a “parental relationship” with a child. However the relationships between a child and professional or voluntary carers or family friends are not parental relationships.”

26. Ms Jones did not seek to challenge the evidence in relation to the appellant’s relationship with S. She submitted that this did not constitute a parental relationship because the mother remained in the house, and the evidence did not point to this relationship going beyond a strong sibling relationship.
27. I disagree. The evidence from both the appellant and from S was very powerful. It is quite clear that S has struggled since the death of his father and looks to his older brother as a father figure. Without wishing to diminish in any way the efforts which the appellant’s mother has made in keeping this family together it is also clear that she finds it a great struggle. I have no doubt at all that she suffers from a number of physical ailments which may well be related to the depression which was manifest at the Tribunal. She has done her very best in very difficult circumstances but she has needed the support of her adult son not only for herself but also in bringing up her younger son S.
28. The oral evidence is supported by the evidence from the independent social worker in her report dated 23 March 2017. At paragraph 7.5 she writes that

“S lost his father in tragic circumstances and from my family observations his older brother has become the surrogate father figure in his life. For example S looks to his brother for confirmation that everything is okay and Abdullahi takes and collects S from school in the same way that his father had done before his death. It is important for S’s social and emotional wellbeing that the bond and attachment that he has to his brother is maintained given that he has recently not lost not just a parent but a supportive male role model.”
29. The appellant’s girlfriend also states in her witness statement that the appellant has become a father figure to his little brother. Her mother also wrote to the Tribunal stating that the appellant holds a big responsibility now by taking care of his mother and younger brother.
30. There is also a letter from Francesca Valerio, the Mentoring and Volunteering Director at Migrants Organise which is the mentoring organisation supporting the appellant’s family. It is a registered charity which has worked in the Ladbroke Grove area for over two decades. She writes

“Abdullahi’s presence in the family has been extremely important especially after the death of his father to provide the emotional and every day support that his mother [MO] and his little brother S need. Abdullahi has been helping with caring for S full-time, taking him to school, helping him with his homework or supervising him when their mother could not be present. Abdullahi is a positive and strong role model for S and he is a co-parenting presence in the house, especially

since their mother [MO] has been feeling very low after the death of their father and sometimes in need of solid support to educate S and respond to his needs.”

31. This was supported by the oral evidence of Charles Golding who said that following the death of their father he had been put in a unique position within the family, forcing him to grow up quickly and to take on his father’s role within the family unit looking out for his little brother and supporting his mother.
32. There is therefore evidence from a wide variety of sources attesting to the strong relationship between the appellant and S and I conclude that this amounts to a quasi-parental relationship.
33. S is a qualifying child since he is a British citizen. No one is suggesting that it would be reasonable to expect S to leave the UK.
34. Taking the factors set out in paragraph 117B of the Nationality, Immigration and Asylum Act 2002, the maintenance of effective immigration controls is in the public interest. The appellant can speak English. He is not a burden on the tax payer since his mother is working. Little weight should be given to the private life which he has established whilst being in the UK since his immigration status has always been precarious.
35. Paragraph 117B(6) states that in the case of a person who is not liable to deportation the public interest does not require the person’s removal in these circumstances.
36. In any event this is not an appellant who has a poor immigration history. All of the decisions which were taken prior to December 2016 were when he was a minor. There was then a period of three months before he made the present application. There are therefore very few countervailing factors against him, aside from the general principle that the maintenance of effective immigration controls is in the public interest.
37. That of course is a very significant factor. However set against that, the best interests of S must be a primary consideration. The strength of the emotional ties between the appellant and his family amounts to a quasi parental relationship because of the death of the appellant’s father and the emotional neediness of his mother following her husband’s death. S’s best interests are manifestly for his older brother, a father figure to him, to remain in the UK.
38. The original judge erred in law. His decision is set aside. It is remade as follows. The appellant’s appeal is allowed.

No anonymity direction is made.

Signed

Date 24 April 2019

Deborah Taylor

Deputy Upper Tribunal Judge Taylor