Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/24590/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On 8th July 2019	**On 20th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

ROLAND [T]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No legal representation
For the Respondent: Mr C Bates (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge A R Hudson, promulgated on 21st February 2019, following a hearing at Manchester on 8th February 2019. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Malawi, and was born on 26th August 1995. He appealed against the decision of the Respondent dated 23rd November 2018 refusing his application for leave to remain on the basis that he had direct access to his British citizen children in the UK.

The Appellant's Claim

3. The essence of the Appellant's claim, for present purposes, is that he was unable to attend the hearing on 8th February 2019 and had applied for an adjournment by a letter dated four days before the hearing on 4th February 2019 that he "was feeling unwell". No medical evidence had been supplied from a GP or from anyone else. The judge went on to consider the appeal and observed, in detailed reasons given (from paragraphs 11 to 17) that the Appellant could not succeed because in May 2017, the Appellant had instigated family court proceedings to gain direct contact with his children.

4. He was only permitted indirect contact, and an order was made that he be limited to that for six months,

> "And attend a full domestic violence perpetrators' programme beginning no later than 30th October 2018. Should he do that, the indirect contact would be reviewed. As of 1st November 2018, Mr [T] had not started the DV course and the case was closed to the family court" (see paragraph 13 of the determination).

Grounds of Application

5. The grounds of application state that the Appellant was disadvantaged and the judge decided in a manner that was procedurally unfair for the following reasons. First, the case was under a float list with no guarantee of it proceeding on the same date. Second, the Appellant's adjournment request was dated 7th February 2019, and in refusing that request, the Tribunal had said that "if the Appellant gets a medical note then the adjournment will be reconsidered". That decision of 7th February 2019, however, did not arrive with the Appellant until 9th February 2019, which was a day after the appeal was heard on 8th February 2019.

6. In the meantime, the Appellant had gone to the Harley Street Medical Centre, which confirms his attendance then on 8th February 2019, the day of the hearing before the First-tier Tribunal, and there he had met with Dr Matthew Stephenson, and had a consultation. The Appellant also maintained that throughout the period during which he was applying for an adjournment, he had contacted the Tribunal's enquiry desk for updates but had not been given any information. In the circumstances, there had been a failure under Rule 4(3)(h) to apply the overriding objective and to deal with cases "fairly and justly". In particular, the strictures in **Nwaigwe [2014] UKUT 00418** had not been followed by the Tribunal. Finally, the judge had erred at paragraph 13 and at paragraph 15 in coming to the decision that he did.

7. On 9th April 2019 permission to appeal was granted.

Submissions

8. At the hearing before me on 8th July 2019, the Appellant was not in attendance. I put his appeal to the end of the morning's list. At the end of the other cases, I heard his appeal in his absence and Mr Bates made a number of submissions. Mr Bates, for the Home Office, stated that the Appellant had put in a late application in any event. There was no indication as to what was wrong with him. There was no letter from the GP providing any indication about his difficulties in attending court on the day. In fact, even in the Grounds of Appeal, the Appellant does not demonstrate what was wrong with him.

9. Furthermore, he does not demonstrate how he was disadvantaged because it is not known what he would have said had he attended. Mr Bates also clarified that the Appellant had been given leave to remain "exceptionally" outside the Immigration Rules, given that he had failed on the suitability requirement, because at that time he had a relationship with his children, which had subsequently ceased. Therefore, the reference that he now makes to the judge having overlooked this is misleading. The position before the judge was that the Appellant did not have contact with the children.

10. The position before the judge was that the Appellant was seeking direct access to his children. There had been no progress in that regard. Furthermore, he had not attended today to explain how he had been disadvantaged.

11. After I returned back to my chambers, I was sent word that the Appellant had arrived. I returned back into the courtroom, after a 40 minutes' hearing with Mr Bates earlier on, and reopened the appeal. Mr [T], the Appellant, explained that he had been sitting outside the courtroom and had not come into the court to see what was happening. I asked him to explain how he would put his case. He said he had gone to the Harley Street Medical Centre on 8th February 2019, the day of the hearing, and met with Dr Matthew Stephenson. He handed up a note. I considered this and it appears that the Appellant had a "sore throat symptom". He was asked simply to take fluids and try cool drinks.

12. I asked him if he had actually undertaken a domestic violence perpetrators' programme. He said that he had. He handed up documentation. There was a letter from Arch charity dated 26th June 2019 from Stoke-on-Trent. Curiously, it referred to the Appellant beginning his modules on 11th June 2019. He had to do five modules over a six week period of two and a half hours each. He was unable to explain how this letter made sense if the Appellant was required to do these modules on 11th June 2019 and yet was dated 26th June 2019.

13. The Appellant continued to maintain that he had been attending these one-to-one sessions. Mr Bates replied that the Appellant had to complete such a programme "no later than 30th October 2018" (paragraph 13) as the judge had made clear. Therefore, this was to no avail.

No Error of Law

14. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

15. The Appellant instigated in May 2017 family court proceedings to gain direct contact with his children. This was fully explained by the judge below. He was only being permitted indirect contact. Therefore "an order was made that he be limited to that for six months and attend a full domestic violence perpetrators' programme beginning no later than 30th October 2018" (paragraph 13). As the judge made clear, by the date of the hearing, this had not been done by the Appellant. He had not started the course. Therefore, "the case was closed to the family court". As the judge explained "it appears in those circumstances that the current position is that the court has determined that it is in the best interests of the children to have no direct contact with their father" (paragraph 13).

16. The judge's conclusion was that "Mr [T] does not have a genuine and subsisting parental relationship with his children, and the family court appears to have concluded that their best interests are served by having no direct contact with their father" (paragraph 16). Mr Bates submitted that if the judge's conclusion was "he is entitled to indirect contact and it would remain open to him to exercise that indirect contact from Malawi if he chooses to do so", then that prospect is still available to him. I agree that that is indeed the case.

17. The judge was entitled to come to that conclusion. This is a case where, six months after the judge's determination, very little progress if any has been made in the Appellant's case. He went to see a Harley Street practitioner at 3pm on 8th February 2019. He had no reason to believe that he had been granted an adjournment. As a matter of courtesy, he ought to have attended at 10am in the morning at the hearing centre and explained to the judge that he could not proceed and had a medical appointment.

18. As it turns out, there was nothing in his medical condition that suggests that he would not have been able to give evidence. As the note from Dr Matthew Stephenson makes clear, this is a patient who "looks well" and that there are "normal no inflammation present at all" and that he does "not exude swollen glands". He has complained about a "possible viral infection" and he has been "advised to increase fluids, try cool drinks to help with sore throat and to speak to a local pharmacist to advise on the medicines for sore throat".

19. But more importantly than this, the fact is that the Appellant had not undertaken a full domestic violence perpetrators' programme which was necessary by 30th October 2018. As a consequence, his file was closed by the family court. Matters even now are not any further progressed.

20. If the Appellant wishes to proceed any further with an application of this sort, this is an appropriate case for a fresh claim. The judge below was entitled to conclude entirely as he did and gave a full and comprehensive determination in that regard. There is no error of law.

Notice of Decision

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

22. No anonymity direction is made.

23. The appeal is dismissed.

Signed Date

Deputy Upper Tribunal Judge Juss 17th August 2019