Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/21552/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 August 2019	**On 14 August 2019**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

JA (NIGERIA)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Clare, instructed by Greenland Lawyers LLP
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court

proceedings. I continue this order, which has been in force throughout.

1. This appeal comes before me today as a result of an order which was sealed by Master Meacher on 9 May 2019. It was ordered by consent that the appeal to the Court of Appeal should be allowed and that the matter would be remitted to the Upper Tribunal so that the fresh consideration could be given to the application of section 117B(6) of the Nationality, Immigration and Asylum Act 2002 to the appellant's case.

2. The relevant facts may be stated shortly. The appellant is a Nigerian national who was born on 7 January 1966. He entered the UK unlawfully in 2002. He entered into a relationship with a British citizen called MB. They had two children named PA and MA, who were born on 5 January 2006 and 21 July 2009 respectively. The appellant's relationship with MB came to an end some time ago. On 20 March 2015, he applied for leave to remain on Article 8 ECHR grounds, relying upon his relationship with his two children.

3. The respondent refused the application on 27 May 2015 and the appellant appealed. The First-tier Tribunal did not accept that the appellant had anything more than occasional contact with his children and dismissed the appeal. The appellant secured permission to appeal to the Upper Tribunal, which ultimately set aside the decision of the FtT and remade the decision, dismissing it for different reasons. It was agreed in the Statement of Reasons which accompanied the order of 9 May 2019 that the Upper Tribunal had erred in its consideration of whether there existed a genuine and subsisting parental relationship for the purposes of s117B(6) NIAA 2002 and, further, that it had erred in its wider approach to Article 8 ECHR.

4. It was agreed at the outset of the hearing that my task was to consider section 117B(6) for myself. Mr Clare initially sought to suggest that certain findings from the previous decisions might have been preserved but he quite properly accepted my suggestion that nothing in either the order or the Statement of Reasons justified that submission.

5. I was referred to two bundles of documents and a report from an Independent Social Worker. I heard oral evidence from the appellant, who was examined by Mr Clare and cross examined by Mr Tufan.

6. In submissions, Mr Tufan accepted, firstly, that there could be no question of whether the children could reasonably relocate to Nigeria on the facts of this case. The focus of the enquiry was therefore on the other factual question in s117B(6), of whether the appellant enjoys a genuine and subsisting parental relationship with his daughters. Mr Tufan reminded me of the correct approach to that question, as reflected in the judgment of Singh LJ (with whom King and Underhill LJJ agreed) at [89] of AB (Jamaica) [2019] EWCA Civ 661. Having heard the appellant's evidence, Mr Tufan accepted that he had a genuine and subsisting parental relationship with his daughters and that the appeal fell to be allowed. I did not need to hear from Mr Clare as a result.

7. I should record that Mr Tufan's concession was plainly correct. The appellant states that he has been living with MB and their daughters since he left immigration detention (following a short sentence of imprisonment at Her Majesty's Pleasure) in December 2016. There is a note on the Home Office's computer system that he is indeed living at that address, and has been since 28 December 2016. Before he was released from detention, the Independent Social Worker Jasmine Smith opined in a report dated 7 November 2016 that he was a devoted father. There is documentary evidence before me from the children's schools and from their GP, speaking to the role that their father has in their life. There are some minor difficulties with the documents, as Mr Tufan sought to explore in cross-examination, but none of these minor issues really detracts from the overall picture of a man who lives with his daughters and his ex-partner and who plays a significant role in the lives of his children. He spoke about his children with real warmth and with a plausible depth of knowledge. It is clear to me that he shares the parenting role with MB in a responsible way, despite the fact that their relationship has come to an end. He spoke about assisting his younger daughter with her mathematics and about the advice he gave to his older daughter about her choice of subjects at school. He made plausible reference to the names of their friends and to the significant events in their lives, such as their taking Holy Communion for the first time. None of this was scripted or forced and the appellant spoke about his children as I would expect from a devoted and active father.

8. Had Mr Tufan not conceded the only point in issue, therefore, I would have concluded for myself that the appellant enjoys a genuine and subsisting parental relationship, as defined in AB (Jamaica), with his two daughters. As Mr Tufan recognised in his short submissions, the engagement of s177B(6) in this manner is dispositive of the appeal. The appellant has committed a criminal offence in the UK but he is not liable to deportation and there is accordingly no public interest in his removal.

Notice of Decision

The previous decision of the Upper Tribunal having been set aside by the order of the Court of Appeal, I remake the decision on the appeal by allowing it on Article 8 ECHR grounds.

MARK BLUNDELL
Judge of the Upper Tribunal (IAC)

13 August 2019