Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/18600/2019

THE IMMIGRATION ACTS

Heard at Field House (via Skype)	**Decision & Reasons Promulgated**
On 14 January 2021	**On 29 January 2021**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

SAMSON ADEWUSI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Nnamani, instructed by Chris Alexander Solicitors
For the Respondent: Mr Jarvis, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a Nigerian national who was born on 9 August 1958. He appeals, with permission granted by First-tier Tribunal Judge Ford, against a decision which was issued by First-tier Tribunal Judge Chana ("the judge") on 6 March 2020. By her decision, the judge dismissed the appellant's appeal against the respondent's refusal of his human rights claim.

Background

2. The appellant claims to have entered the United Kingdom in 1996. He made no attempt to regularise his status until 2010. On 11 May that year, he made an application for leave to remain in reliance (as I understand it) on paragraph 276B

of the Immigration Rules. He was required, under that paragraph as it then stood, to establish that he had been in the UK for 14 years or more. He did not establish that to the satisfaction of the respondent. His claim was accordingly refused. There was no right of appeal.

3. The appellant remained in the United Kingdom and on 9 October 2015, he made a further application for leave to remain, in reliance on his rights under Article 8 ECHR. His application was refused but an appeal was allowed on Article 8 ECHR grounds on 14 January 2017. (This decision has not been adduced before me, nor was it before the FtT). He was granted leave to remain which was valid from 31 March 2017 to 30 September 2019.

4. Before the expiry of his leave, the appellant made an application for further leave on the basis of his private and family life in the United Kingdom. In his application, he stated that he wished to remain in the UK so that he could continue his relationship with his son, "L", who was born in London on 16 February 2007. The appellant stated that he had lived with L and his mother until his relationship with her had broken down in 2018. From that point, the appellant stated that he had remained in regular contact with his son. He stated that he also bought things for L and that he also provided L's mother with money for his upkeep.

5. On 23 October 2019, the respondent wrote to the appellant's solicitors to request further evidence in support of the application. Attached to the email was a list of the 'missing relevant information'. In the event that the appellant was unable to provide the missing relevant information, the email from the respondent stated that an explanation was to be provided. The list was as follows

   (1) If your client does not reside with his child then please provide documentary evidence, dated within the last 6 months, to confirm that he has contact with his child. This should be on official headed paper and be from the child's school, nursery, health visitor, GP or local authority. The letter should confirm what contact he has with this child, for example, whether he has attended appointments with them and whether he is listed as one of their emergency contacts.

   (2) Letter from ["AA" - L's mother], confirming what role he has in child's life.

   (3) Passport or another official document bearing the signature of AA. This is required as we need to verify that the signature of the letter you have provided as evidence of his contact with his child matches that of an official document in the name of AA.

6. The appellant's solicitors responded to this email on 4 November 2019. The email attached a 'signed statement and passport copy from [AA], confirming the role he has in his child's life'. There was no explanation for the omission of the document(s) described at (1) of the respondent's email.

The Respondent's Decision

7. The respondent refused the application the following day, 5 November 2019. She noted the history which I have already set out. She concluded that the appellant was unable to meet the Immigration Rules before turning to consider whether there were any exceptional circumstances which warranted granting leave to remain on Article 8 ECHR grounds. The respondent's conclusion in relation to the appellant's relationship with his son was as follows:

> You have told us that you are in a parental relationship with [L] who you have claimed to see often however the evidence that you have submitted shows that when you submitted this application, you had last seen your son four months ago. It is also considered that the refusal of this application would not constitute a breach of this department's requirements under Section 55 as your child can continue to live in the UK with his mother, as he does now, even though your application is refused and even if you were outside of the UK.

8. I should note that the conclusion in the first sentence above was premised on the witness statement from AA which had been provided by the appellant's solicitors. That statement was dated 2 November 2019 and stated that the appellant had last seen his son in July. AA nevertheless stated that shared parental responsibility for L; that he had an active role in L's upbringing and that he contributed £100 per month to L's upkeep, pursuant to 'a Safeguarding Agreement brokered by the London Borough of Newham'.

The Appeal to the First-tier Tribunal

9. The appellant appealed to the First-tier Tribunal and his appeal came before the judge on 24 January 2020. He was represented by a solicitor, the respondent was represented by a Presenting Officer. The appellant's solicitors had filed and served a bundle of additional documents in support of the appeal. That bundle contained further statements from the appellant and AA; a skeleton argument; a copy of L's passport and birth certificate; the correspondence I have described at [5]-[6] above and the original application which had been made to the respondent (although it appears that additional pages had been added to this section, reflecting post-decision financial support).

10. The judge heard oral evidence from the appellant. Having considered the oral and documentary evidence before her, she concluded that the appellant did not have a genuine and subsisting parental relationship with his son.

11. The judge was concerned by the paucity of evidence concerning the relationship: [26]. She noted that there was evidence of money passing between the appellant and AA but she was concerned that the sums shown in the bank statements were inconsistent with the account given by A. AA had stated in her statement that the appellant gave £100 a month but the bank statements showed different sums. The appellant had stated at the hearing that AA was 'lying' about the sum, which varied according to his earnings. The judge noted that there was written evidence from AA but she had not attended the hearing. She felt that she could

place very little weight on the statement because, if she had wanted the appellant to live in the UK to have a parental relationship with her son, 'she would have attended the hearing': [27].

12. The judge attached weight to the absence of any written evidence from L himself, as she did to the absence of other documentary evidence which showed that contact was taking place. There were no recent photographs, for example: [28]. The judge noted that the appellant had said to her that he walked with the appellant to school but he had been unable to name the school, beyond stating that it was a catholic school: [29]. The judge considered the appellant's explanation for not attending parents' events at his son's school to be inadequate and he showed no awareness of how his son's schooling was progressing: [30]. He had been unable to explain the activities that he and his son did together and his answers in this respect had been vague: [31].

13. At [32], the judge reiterated her concern about the difference between the accounts given by the appellant and AA about the amount of money he provided and the fact that the appellant had accused her of lying. She felt unable to rely on the written evidence from AA. She accepted that the appellant provided money to AA but this did not demonstrate, in itself, that he had a relationship or contact with his son: [32]-[33]. The appellant had claimed that he had a very strong relationship with his son but the evidence did not accord with that claim: [34].

14. The appellant had claimed that L was his only child but that was 'patently not true' because the appellant had two children in Nigeria. He had abandoned those children when he came to the UK and had not given an adequate explanation for his failure to keep in touch with them. The judge considered that the appellant was 'using his son in order to get further leave in this country': [35]. She did not accept that the appellant's removal from the UK would compromise his son's best interests: [36]. He had not been truthful at the hearing about his relationship with his son and he had not established that there was a genuine and subsisting parental relationship. At [39], the judge summarised her findings as follows:

> The appellant claimed that he came to this country in 1996 and has remained ever since. He claims that he has a family life with his son [L] who is a British citizen aged 13. I have found that the appellant does not have a genuine and subsisting parental relationship with his son, [L]. When the appellant was granted leave to remain in the United Kingdom, it was on the basis that the appellant, his ex-wife and their son [L] were living together as a family and because [L] was a British citizen. And they were his carers together. [L] is now living with his mother and I have found that there is no credible evidence that he is in contact with [L] or that they have a subsisting and genuine father and son relationship.

15. The judge did not accept that the appellant was likely to develop a relationship with his son in the future; he had abandoned his two children in Nigeria and he had no intention of fulfilling his parental responsibility towards L, other than giving AA a little money: [41]. His claim to be in a genuine and subsisting relationship with L was a cynical attempt to gain an immigration advantage:[41].

He had little or no contact with his son and it would not interfere with the latter's best interests to return the appellant to Nigeria: [43]. He could establish a relationship with his own children upon return: [44]. In the circumstances, the judge concluded that the maintenance of immigration control justified the appellant's removal: [45]-[48].

The Appeal to the Upper Tribunal

16. The grounds upon which permission to appeal was sought are somewhat discursive but may be summarised as follows. Firstly, that the judge had left material matters out of account in concluding that the appellant did not enjoy a genuine and subsisting relationship with his son. Secondly, that the judge had placed weight on irrelevant matters in drawing on the appellant's behaviour towards his children in Nigeria. Thirdly, the judge had failed to consider that the appellant was an anxious witness who had perhaps struggled to give oral evidence.

17. In granting permission to appeal, Judge Ford considered it arguable that the judge had failed to give clear and cogent reasons for concluding that the appellant did not have an ongoing relationship with his son. The judge may have erred in 'effectively requiring' a letter from the appellant's son and in placing little weight on the written evidence from AA.

18. Directions for the progression of the appeal during the pandemic were issued by Judge Smith. The respondent duly provided a response to the grounds of appeal and Ms Nnamani provided a skeleton argument.

19. In developing the arguments in the grounds and the skeleton, Ms Nnamani submitted that the judge had lost sight of the background to the appeal. The appellant had been granted leave to remain in reliance on his relationship with L and he had lived with L and AA as a family unit until 2018. The previous judge's decision had not been available to Judge Chana but these facts had been common ground. The judge had been provided with two statements from AA, the first of which had been sent to the respondent in response to her request for further evidence. It was correct that the appellant had not sent anything in response to the respondent's first point in that email correspondence but Ms Nnamani assumed that he had sent in what was available to him in the time available. She accepted that there had been no explanation provided for the missing documents at the time.

20. Ms Nnamani submitted that there had been a 'slight discrepancy' over the sums which passed between the appellant and AA. But there was evidence of a genuine and subsisting relationship being in existence between father and son. The question was whether, on the evidence before the FtT, the judge had been entitled to find that there was no genuine and subsisting parental relationship. The judge had made no reference to the appeal being allowed in 2017 and no reference to the appellant living with his son until 2018. She did not seek to advance a rationality challenge; the point was that the judge had erred in her consideration of the evidence and had made unsustainable findings. The judge had 'ignored' the evidence from AA. There was obviously no requirement for

the appellant's son to provide a statement in support and the judge had erred in concluding otherwise.

21. Mr Jarvis relied upon the respondent's reply to the grounds of appeal dated 18 August 2020. There was, he submitted, no merit whatsoever in the grounds. Ultimately, the grounds amounted to a rationality challenge. The judge had considered all of the relevant oral and documentary evidence. She was well aware of the background. She had been entitled to attach weight to the absence of AA from the hearing and to the discrepancy between her written evidence and the evidence of the funds which left the appellant's account for his son. The appellant had been unable to recall the name of his son's school and there had been no evidence from that school of the appellant's role in L's life. There was, in summary, nothing legally wrong with the judge's analysis or her conclusions and she had been entitled to attach weight to the appellant's 'slapdash' attitude to his children in Nigeria.

22. In response, Ms Nnamani submitted that the evidence clearly showed payments being made by the appellant to AA. He sometimes earned more and gave more; that was unsurprising. She had not attended the hearing but there was written evidence from her. The appellant lived close to his son in East London and he was able to spend time with him at home. The judge's reasoning at [39] was unsustainable; the fact that the appellant did not live with his son did not mean that he did not have a genuine and subsisting parental relationship with him. Even if there was not a genuine and subsisting parental relationship, it was not in L's best interests for his father to be removed.

23. I reserved my decision at the end of the submissions.

Analysis

24. The First-tier Tribunal is an expert body, tasked with administering a complex area of law in challenging circumstances and appeals from it should be approached with a degree of caution; it is probable that in understanding and applying the law in its specialised field, the FtT will have got it right: AH (Sudan) [2007] UKHL 49; [2008] 1 AC 678, at [30], per Lady Hale. Appellate courts should be very cautious in overturning findings of fact made by a first instance judge who has seen witnesses and considered the whole sea of evidence before them. Judges hearing appeals on facts should only interfere if a finding of fact was made which had no basis in the evidence, or where there was a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence so that the decision could not reasonably be explained or justified: Mackenzie v Alcoa Manufacturing [2019] EWA Civ 2110, at [54], per Dingemans LJ, adopting the language of Lewison LJ in Fage v Chobani [2014] EWCA Civ 5.

25. It might properly be said that the reference to a 'sea of evidence' is not particularly apt in the context of this case, however. The signal feature of this case, as was apparent to the experienced judge, was the absence of evidence which might ordinarily be expected to show an ongoing relationship between father and teenage son. As I have noted above, there was a dearth of evidence before the respondent. The respondent was not required to provide the

appellant with an opportunity to submit further evidence but she did so, and she provided a helpful list of the evidence she considered to be missing. As Ms Nnamani accepted before me, the respondent plainly asked the appellant to submit evidence of each of the three types on that list. He did provide a short statement from AA, supported by a copy of her passport. He did not provide a letter on headed paper from one of the bodies listed at (1) of the respondent's list. He did not provide an explanation for the absence of that evidence. Nor did he ask for any further time to produce it. When the respondent came to consider the letter from AA, she noted that it stated that the appellant had not seen his son for four months. Even before the case came before the judge, therefore, this was a case characterised by little evidence of the central fact. That point having been identified with clarity in the respondent's letter of refusal, it might have been expected that there was a sea of additional evidence submitted to show that the appellant continued to have a relationship with his son.

26. There was very little additional evidence. There was a further statement from AA, which read (in full) as follows:

> I, [AA], of [address given], hereby make this statement in support of Mr Samson Adewusi's appeal against the refusal by the respondent to grant an extension of his leave to remain in the United Kingdom.
>
> I am a Nigerian national and I was born on 11 August 1965.
>
> I arrived in the United Kingdom in May 2000 and have been living here continuously ever since.
>
> Mr Adewusi, who is the appellant in this appeal, is my former partner and we have a child together, [L]. He who was born in the United Kingdom on 16 February 2007 and has lived in this country all his life.
>
> We all used to live together as a family unit until around 30 June 2018 when my relationship with my former partner broke down.
>
> Even though my former partner and I are no longer in a relationship, we continue to share parental responsibility. Mr Adewusi takes an active role in our son's upbringing and continues to see him regularly. He contributes about £100.00 per month for the upkeep of our son.
>
> Our son has a close relationship with Mr Adewusi and it will affect him greatly should his father not be allowed to remain in the UK with him. For these reasons, I humbly ask for the Tribunal to allow his appeal.

27. There was a suggestion in the grounds that the judge failed to take account of this statement, or the statement from AA which preceded it. Ms Nnamani also suggested at one point that the judge had failed to take into account the history of the case, including the fact that the appellant had lived with AA and L until the relationship broke down in 2018 and the fact that he had been granted leave

in reliance on the relationship(s) in 2017. Insofar as the grounds are put in that way, there is no merit in them whatsoever. The judge plainly considered the written evidence from AA but she was unwilling to attach weight to it because she had not attended the hearing and because the account she gave of the appellant's support for his son contradicted the evidence of payments into the account. In reaching the latter conclusion, the judge took account of the appellant's surprisingly robust response to the point when it was put to him by the Presenting Officer, when he said that AA was lying. That was a surprising response from the appellant, given that the statement which said that he provided £100 per month was in the bundle prepared by his solicitors. Equally, as Mr Jarvis noted in his excellent submissions, the judge clearly referred to the relevant history at [3], [5] and [12]-[13] of her decision.

28. As the judge noted, no doubt with an eye on the exchange between the respondent and the appellant's solicitors shortly before the refusal letter, there was nothing at all from L's school. Quite aside from the appellant having no evidence from the school to show his role in L's life, the appellant was unable even to name his son's school, despite his evidence that he walked him to school on occasion. There were no photographs of the two of them together and there was nothing from L himself. The latter point caused Ms Nnamani to make a further criticism of the judge, which was that she had *required* a statement from L. But the judge did not do so. Had the judge concluded that she was *unable* to find that there was a genuine and subsisting parental relationship without a statement from L, she would undoubtedly have erred. But that was not her conclusion. The judge merely took account of the fact that evidence which should have been readily available was not before her. There was nothing impermissible in her doing so. Should authority for that conclusion be required, it is to be found in TK (Burundi) [2009] EWCA Civ 40, at [16]. The missing evidence in that case was from the appellant's ex-partner, whereas what was missing in this case was evidence from the appellant's thirteen year old son. It was perfectly legitimate for the judge to attach weight to the absence of that evidence, given the issue in this case and the dearth of other evidence.

29. Ms Nnamani submitted in the grounds that the judge had erred in attaching significance to the appellant's behaviour towards his two adult children in Nigeria. I do not accept that submission, for the reasons given by Mr Jarvis. The fact that the appellant had lost contact with his children when he left Nigeria was obviously relevant to the real question before the judge, which was whether the relationship that the appellant had enjoyed with his son up to mid-2018 had come to an end after he separated from AA. That cannot properly be described as an irrelevant matter to the resolution of the factual issue before the FtT in this case.

30. It is not established, therefore, that the judge failed to take relevant matters into account. Nor is it established that she took irrelevant matters into account. She was clearly cognisant of all the evidence which was and was not before her. I asked Ms Nnamani during her submissions whether what she really asserted was that the judge's decision was perverse or irrational. Understandably, she baulked at that and distanced herself from any such submission. She was correct to do so; it could not properly be submitted that no judge, properly directing herself to the law and the facts in this case could reach the conclusion that the

appellant did not enjoy a genuine and subsisting parental relationship with his son.

31. Ms Nnamani preferred to put her complaint along the lines that it was expressed at various points in her skeleton argument. At [7], for example, she submitted that the judge had 'failed to adequately consider' the fact that the appellant had lived with his son until 2018 and at [17] there is the same submission, this time in relation to the written evidence given by AA. The charge is not that the judge failed to take the material into account, or that she reached a perverse conclusion on that evidence; it is that she failed to consider it 'adequately'. With respect to Ms Nnamani, this does not identify an error of law on the part of the FtT. Instead, it represents nothing more than disagreement with the analysis undertaken by the judge. The weight to be given to particular evidence is obviously a matter for the trial judge. What was said by Green LJ at [55] of SB (Sri Lanka) [2019] EWCA Civ 160, regarding the failure of the first instance judge 'properly to analyse the evidence' marks no departure from that principle; the difficulty with the judge's analysis in that case was, as Green LJ went on to say, was that he had reached a conclusion which was illogical and inconsistent. Judge Chana's conclusions in this case were not illogical or inconsistent. Faced with a paucity of evidence and a conflict between the documents, the judge reached the conclusion that the appellant had failed to discharge the burden of proving the relationship which would engage s117B(6) of the 2002 Act. She was properly entitled to reach that conclusion, and she gave more than adequate reasons for doing so.

32. I should for the sake of completeness deal with three further matters. Firstly, the contention in ground three that the judge failed to take into account the possibility that the appellant was a nervous witness. There is no evidence that any such submission was made to the judge, however, and there is certainly no suggestion that the judge was invited to treat the appellant as a vulnerable witness. As far as I can see, there is simply no evidence in support of this ground of appeal, whether in the form of a witness statement from the appellant or the solicitor who represented him or medical evidence.

33. Secondly, Ms Nnamani made reference in her skeleton to the decision of UTJ Plimmer in SR (Pakistan) [2018] UKUT 334 (IAC). That decision should not have been cited in this context. Although Judge Plimmer's decision on the hypothetical question posed by s117B(6) was endorsed by the Court of Appeal in AB (Jamaica) and AO (Nigeria) [2019] 1 WLR 4541, her conclusion on the meaning of a genuine and subsisting parental relationship was not: [97] of Singh LJ's judgment refers, with which King and Underhill LJ agreed. There is nothing in the decision in this case, however, which demonstrates an approach which was at odds with that required by AB & AO.

34. Thirdly, Ms Nnamani sought to develop an alternative argument that L's best interests wrongly fell away upon the judge having concluded that there was no genuine and subsisting parental relationship. I agree with the premise of the submission, which is that the resolution of the question posed by s117B(6) will not in all cases be determinative of the assessment required by s55 of the Borders, Citizenship and Immigration Act 2009 or, for that matter, the wider assessment required by Article 8 ECHR. But the analysis undertaken by the judge in this

regard was adequate. She concluded that the appellant was not taking an active role in the life of his son and that they actually had 'little or no contact'. There was no reason to believe that this appellant, who was found to be 'using his son in order to get further leave in this country', would seek to rekindle his relationship with his son. There was no reason to think, in those circumstances, that the best interests of the son could press sufficiently hard to overcome the negative pull of the appellant's inability to satisfy the Immigration Rules and to fall within s117B(6).

35. The reality of this case is that there was very little evidence of any relationship between the appellant and his son. The high points – which Ms Nnamani quite properly emphasised in her valiant submissions – were the financial support and the statements from AA. But the financial support did not, without more, satisfy the relationship requirement in s117B(6) and the written evidence given by AA was lacking in detail, reduced in weight by her non-attendance and rendered even more problematic by the contradiction detailed above. The judge having reached a rational and proper conclusion on the evidence before her, the proper remedy (in the event that the appellant nevertheless wishes to maintain that he has a parental relationship with his son) is to make a fresh application under paragraph 353 of the Immigration Rules, supported by the evidence which any parent with a role in the life of a child would be able to produce.

Notice of Decision

The appellant's appeal against the FtT's decision is dismissed. The decision of the judge stands.

No anonymity direction is made.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

04 March 2021