



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: HU/13583/2019

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 10th October 2023**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**RICHARD AHUMA FAYORSEY
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Alasdair Mackenzie of Counsel, instructed by the Joint Council

for the Welfare of Immigrants (JCWI)

For the Respondent: Ms Julie Isherwood, a Senior Home Office Presenting Officer

Heard at Field House on 5 September 2023

DECISION AND REASONS

Introduction

1. The appellant challenges the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 20 August 2019 to refuse him leave to remain in the UK on human rights grds. He is a citizen of Ghana.
2. For the reasons set out in this decision, I have come to the conclusion that the appeal must be dismissed.

Procedural matters

3. **Mode of hearing.** The hearing today took place face to face.
4. **Applications: adjournment and 'new matter'.** The appellant's representatives applied for an adjournment of today's hearing, and have sought to admit a 'new matter' pursuant to section 85 of the Nationality, Immigration and Asylum Act 2002 (as amended), specifically, the appellant's new relationship with a British citizen woman and the birth to them of a child in April 2023 (Child B).
5. JCWI, who represent the appellant, did not receive instructions on the 'new matter' until July 2023, some time after the error of law hearing on 20 April 2023 and the birth of Child B in April 2023. They then wrote to the respondent asking her to agree the admission of the circumstances concerning Child B and his mother as a section 85 'new matter'. The respondent has not consented to my dealing with the appellant's relationship with Child B. I am not seised of the circumstances arising out of his child's birth.
6. By an order dated 4 August 2023, I refused the application to rely on a 'new matter', as I must when the respondent has not consented to its introduction: see *Mahmud (S. 85 NIAA 2002 - 'new matters' : Iran)* [2017] UKUT 488 (IAC), *Quaidoo (new matter: procedure/process) Ghana* [2018] UKUT 87 (IAC), and *AK and IK (S.85 NIAA 2002 - new matters : Turkey)* [2019] UKUT 67 (IAC). On 4 September 2023, I also refused the adjournment request. I need not set out my reasons in detail as I made an Order on each occasion.

Background

7. The main basis of the appellant's case is his relationship with his son (Child A), a British citizen, who lives with the appellant's former partner. He contended that the private and family life rights of himself, his former partner, and their child were not properly taken into account by the respondent, or by First-tier Judge Buckwell who dismissed his appeal in the First-tier Tribunal.
8. The First-tier Judge dismissed the appeal principally because he found that the appellant did not have a genuine and subsisting parental relationship with Child A. The appellant appealed to the Upper Tribunal.

Permission to appeal

9. Permission to appeal to the Upper Tribunal was granted on 20 July 2020 on the basis that it was arguable that First-tier Judge Buckwell had erred law in finding that the appellant did not enjoy a parental relationship with his son (Child A), and in addition, that the Judge had arguably failed to take account of the guidance given by the Upper Tribunal in *SR (subsisting*

parental relationship: s117B(6)) Pakistan [2018] UKUT 00334 and Secretary of State for the Home Department v AB (Jamaica) [2019] EWCA Civ 661.

10. The respondent filed a Rule 24 Reply, arguing that the Judge's findings on this key point were properly, intelligibly and adequately reasoned: at the date of hearing on 6 January 2020, the appellant had not had contact with Child A since November 2019.

Error of law decision

11. By a decision at a hearing on 20 April 2023, at which Mr Alasdair Mackenzie represented the appellant, I set aside the First-tier Judge's decision, for remaking in the Upper Tribunal. I gave the following directions for the remaking hearing:

“(1) **Not later than 28 days** from the sending out of this decision, the appellant shall file and serve a bundle of updated evidence regarding the child [Child A] and their relationship including the evidence made available under the Family Court protocol. The updating bundle shall not without the leave of the Upper Tribunal exceed 100 A4 pages and is to be submitted in electronic form, legible, paginated, indexed and bookmarked;

(2) **Not later than 28 days thereafter**, the respondent shall consider the updated evidence and shall notify the Upper Tribunal whether she maintains her opposition to the appellant's appeal, stating briefly her reasons for so doing;

(3) **Not later than 7 days** before the resumed hearing, the parties may file revised skeleton arguments, limited to the issues identified above, which shall not without the leave of the Tribunal exceed 10 A4 pages and shall be in electronic format;

(4) The appeal will be listed for remaking on the **first available date after 72 days**, with a time estimate of half a day. No interpreter is required; and

(5) Liberty to apply.”

12. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

13. The oral and written submissions at the remaking hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal. The appellant has not complied with direction (1), the language of which was mandatory. He has now had over four months in which to do so. Direction (2) is not triggered.

14. At the hearing today, Mr Mackenzie confirmed that the appellant still does not have contact with Child A and that for that reason, those instructing him had not thought it necessary to comply with direction (1). The appellant now seeks to rely on a new relationship and on a different child, Child B, who was born in April 2023. Mr Mackenzie's instructions are that the appellant is not cohabiting with Child B's mother.

Conclusions

15. It is not appropriate for the Upper Tribunal to be the first decision maker in relation to Child B, and, absent the respondent's consent to my dealing with the 'new matter' of Child B, I have no jurisdiction to do so. It is open to the appellant to make further submissions to the respondent concerning Child B in the normal way.
16. The appellant continues to contend that today's hearing should have been adjourned, either because the circumstances regarding Child A may still improve, if more time is allowed, or because he argues that the Tribunal cannot consider properly the basis of this appeal (his parental relationship with Child A) unless the circumstances regarding Child B are admitted.
17. There is no merit in either argument: the appellant has chosen not to adduce any documents under (1) above to assist the respondent and Tribunal in considering the circumstances regarding Child A. Child B's case is not before me.
18. Mr Mackenzie accepts that the basis of the appeal below and of the error of law decision, which concerned the appellant's parental relationship with Child A, cannot succeed as there has been no relationship between the appellant and that child since November 2019.
19. Accordingly, this appeal must be dismissed.

Notice of Decision

20. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the appeal.

Judith A J C Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 5 September 2023

