Case No: UI-2022-003202

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

First-tier Tribunal No: PA/54999/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22 June 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MJD
(Anonymity Direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Q Ashu of Hazelhurst Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 6 June 2023

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant is a national of Liberia born on 5 April 1960. He claims to have arrived in the UK on 6 September 2004 and claimed asylum the same day. His claim was refused on 31 March 2006 and his appeal against that decision was dismissed in the First-tier Tribunal on 19 July 2006. He became appeal rights exhausted on 30

August 2006. The appellant then made further submissions on 26 April 2010, 7 August 2013, 19 June 2014 and 20 August 2015, all of which were refused in decisions of 30 January 2013, 12 February 2014, 8 January 2015 and 18 February 2016 respectively. The appellant appealed against the 18 February 2016 decision and his appeal was dismissed on 29 March 2018. He became appeal rights exhausted again on 7 August 2018.

3. On 2 November 2018 the appellant made further submissions and those were refused on 4 December 2018. He made further submissions once again on 10 February 2020 which were treated as a fresh human rights claim and refused by the respondent in a decision of 4 October 2021, giving rise to the current appeal.

4. The appellant's original asylum claim, as summarised by the Immigration Judge hearing his appeal in June 2006, was made on the basis that he feared persecution in Liberia as a result of his involvement with the All Liberian Coalition Party (ALCOP). He was claiming asylum with his wife at the time, MD, who had unsuccessfully appealed against a decision in her own asylum claim. The appellant also relied, at the appeal hearing, on his medical condition as being HIV positive. The Immigration Judge, dismissing the appeal in July 2006, did not find his claim to be credible and found that he was at no risk on return to Liberia, that his medical condition did not engage Article 3 and that his removal would not breach Article 8. The appellant's appeal in March 2018 was similarly dismissed on the basis that he was at no risk on return to Liberia and that his medical condition did not give rise to an Article 3 risk on return. By that time the appellant had a new partner, VC, a Zimbabwean national who had been naturalised as a British citizen, with whom he lived at weekends since November 2017. The First-tier Tribunal Judge found that the appellant's partner could relocate to Liberia with him and that there would be no breach of Article 8.

5. The appellant's most recent submissions, dated 29 January 2020, maintained his claim to fear persecution in Liberia and to be at risk on return there as a result of his medical condition, and also relied upon his relationship with his partner VC. It was submitted that the appellant's partner's family lived in the UK and he was close to their children including two nephews. The appellant claimed that his removal from the UK would be in breach of his Article 8 human rights.

6. The respondent, in her letter of 4 October 2021 refusing the appellant's application, relied upon the adverse findings made by the previous Tribunals in relation to his claim to be at risk on return to Liberia and concluded that the submissions were not significantly different to those previously considered and did not amount to a fresh asylum claim. The respondent went on to consider the appellant's human rights claim and accepted that he had a partner, VC, but considered that there were no insurmountable obstacles to his partner relocating to Liberia with him and that the requirements of Appendix FM of the immigration rules were not met,. The respondent did not accept that there were very significant obstacles to the appellant's integration in Liberia for the purposes of paragraph 276ADE(1)(vi) and considered that there were no exceptional or sufficiently compelling circumstances justifying a grant of leave outside the immigration rules. The respondent considered the evidence relied upon by the appellant in regard to his health problems but considered that he could access some treatment in his home country and concluded that he had not demonstrated that the high threshold for Article 3 was met in that regard nor that the decision to refuse his application was in breach of Article 8.

7. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Thorne on 10 May 2022. The appellant did not pursue his appeal on asylum or Article 3

grounds, but relied only upon Article 8 in relation to his family life with his partner VC with whom it was said that he had married in a traditional ceremony in 2018. The appellant's evidence was that he had no family or friends in Liberia, that he had no contact with the mother of his five children and that his children were living in Ghana or Guinea. He claimed that he looked after his sister-in-law's children regularly and that his stepson and his wife and their two children visited him and his partner. The judge also heard from VC who said that that she was born in Zimbabwe and had come to the UK in 2001, that she suffered from a number of medical problems and worked as a social worker and owned two properties in the UK. VC also said that she did not want to live in Liberia or Zimbabwe and that she had never been to Liberia and knew no one there. She explained that she had an adult son from a previous relationship, that he and his two children were British and visited her regularly and that she looked after them regularly.

8. Judge Thorne accepted that the appellant had established a private life in the UK and a family life with his wife VC and accepted that his removal would interfere with that, but he concluded that the respondent's decision was a proportionate one. He considered that the evidence did not establish that there were insurmountable obstacles to family life continuing outside the UK and he found that there were no very significant obstacles to the appellant's integration in Liberia and no exceptional circumstances justifying a grant of leave outside the immigration rules. The judge found further that it would not be disproportionate to require the appellant to return to Liberia on his own or with VC for the limited period required to make an entry clearance application. The judge accordingly concluded that the public interest outweighed the human rights of the appellant and his wife and he dismissed the appeal in a decision issued on 22 May 2022.

9. The appellant sought permission to appeal against that decision to the Upper Tribunal on the grounds that the judge had disregarded section 55 of the Borders, Citizenship and Immigration Act 2009 and had failed to give consideration to the appellant's wife's grandchildren in the proportionality assessment.

10. Permission was granted on 27 June 2022 and the matter then came before me.

11. At the hearing both parties made submissions.

12. Mr Ashu submitted that Judge Thorne had erred by failing to consider or address section 55 in regard to the appellant's wife's grandchildren despite that being raised before him, which was a material error of law. He relied on section 117B(6) of the Nationality, Immigration and Asylum Act 2002. Mr Ashu submitted that the evidence before the judge was that the appellant and VC had had to move to a larger house in order to accommodate the grandchildren and therefore the best interests of the twin grandchildren ought to have been considered. Mr Ashu referred to a Rule 15(2A) application which he said had been made to the Upper Tribunal, to admit further evidence including a further statement from the appellant and a social worker's report in relation to VC's grandchildren.

13. Mr Bates accepted that the judge had made no specific reference to the best interests of the grandchildren and that he made no specific finding of family life between the appellant and his step-grandchildren, but he pointed out that the evidence was that the appellant and VC did not live with the grandchildren. Section 117B(6) did not apply as there was no parental relationship between the appellant and VC's grandchildren. The children lived with their own parents. Mr Bates pointed out that the judge had made an alternative finding, that the appellant could return to

Liberia and make an entry clearance application. He submitted that if the judge had found the best interests of the grandchildren were for the appellant to remain in the UK, it was unlikely he would have found the respondent's decision disproportionate in any event.

Discussion

14. Mr Ashu made references to a Rule 15(2A) application to admit further evidence including a social worker's report and a further statement from the appellant which would address the best interests of VC's grandchildren and "bring it all out". I note, however, that the Rule 15(2A) request received by the Upper Tribunal refers to the new evidence but does not enclose any evidence and does not establish that such a report has yet been prepared and received. It was therefore speculation on Mr Ashu's part that it would assist the appellant's case. In any event, that was not evidence before the First-tier Tribunal and is thus of no relevance to the current proceedings which seek to challenge Judge Thorne's decision on the evidence available to him at the time he made that decision. I note that no reason has been provided as to why no social work report was prepared for that hearing nor produced at an earlier stage when further submissions were made to the respondent in the years following the establishment of the appellant's relationship with VC.

15. It seems to me that much is now being made of an issue which did not in fact form a significant part of the arguments put to Judge Thorne. Although the appellant's skeleton argument for the hearing before Judge Thorne, and the various witness statements produced, referred to the appellant and VC's caring role for the children, I can find no reference to section 55 and the children's best interests in any of those documents, and certainly no mention of those best interests being a material part of a proportionality assessment. The skeleton argument made a passing reference, at paragraph 7, to VC caring for her sister's children and son's children during her spare time in the UK and it is clear from that and from the issues identified at paragraph 12 that the matter was raised in the context of her ties to the UK and her reasons for not wishing to relocate to Liberia with the appellant, rather than in the context of the best interests of the children. The same can be said for the evidence within the statements.

16. It is in that context that Judge Thorne's findings must be considered, as it is clear that he gave consideration to, and addressed, the matters raised in the appellant's skeleton argument and the various witness statements. At [17] he set out the appellant's evidence about the children of VC's son and her sister, and at [21] he set out VC's evidence in that regard. He confirmed at [24] that he had taken all that evidence into account, and there is no reason to conclude that he did not. It is clear from his findings at [79] that the relationships of the appellant and VC with the children were considered by the judge as part of the proportionality assessment where, at [79(g)], he considered the maintenance of family relationships if VC relocated to Liberia with the appellant. That was a matter which he considered again at [96]. Therefore, the judge plainly had full regard to the evidence of the impact upon all family members if the appellant and VC were to leave the UK and he therefore clearly gave consideration to the children of the family in the context in which the matter was argued before him.

17. In any event, there was no evidence before Judge Thorne establishing or suggesting that the children's best interests lay in the appellant or VC remaining in the UK. Even assuming that that was the case, as Mr Bates submitted, there was no evidence before the judge to suggest that the children's best interests could have had any material impact upon the proportionality assessment under Article 8. The

evidence before the judge was extremely limited in that regard and was that the children visited the appellant and VC and stayed with them on occasions, but not that they lived together. The children lived with their own parents – VC's sister's children lived with her sister and her grandchildren lived with her son and his wife, and it seems from the evidence that VC's grandchildren lived in a different city some distance away. Neither the appellant nor VC had any parental relationship with the children and section 117B(6) was clearly not engaged. It is also relevant to note, as Mr Bates pointed out, that the judge made an unchallenged finding in the alternative, at [97], that the appellant could return to Liberia and make the appropriate entry clearance application to return to the UK and, in such circumstances, there was no reason for VC to be separated from the children at all.

18. For all these reasons I find no errors of law in Judge Thorne's decision. He had full regard to the evidence and considered all arguments raised before him in the context in which they were made. The evidence before him did not raise any particular issues as to the best interests of the children and certainly did not suggest that those interests were of material weight in a proportionality assessment. The judge's proportionality assessment included all relevant and material matters and his findings and conclusions following that assessment were cogently reasoned and were fully and properly open to him on the evidence before him. There is nothing of merit in the grounds. I therefore uphold the judge's decision.

Notice of Decision

19. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. The decision to dismiss the appeals stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 June 2023