IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003473

First-tier Tribunal No: HU/50382/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

21st December 2023

Before

UPPER TRIBUNAL JUDGE KOPIECZEK
DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

AD (COTE D'IVOIRE)
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Kofo Anifowoshe, Counsel instructed by Direct Access
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 4 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or his daughter. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant has been granted permission to appeal from the decision of First-tier Tribunal Judge M L Brewer promulgated on 18 April 2023 ("the Decision"). By the Decision, Judge Brewer dismissed the appellant's appeal against the decision of the respondent made on 16 October 2021 to refuse to grant the appellant further leave to remain on human rights grounds.

2. The appellant is a national of Cote d'Ivoire (aka "Ivory Coast"), born on 22 March 1976. The appellant arrived in the UK on 4 May 2014. Following a successful human rights application, the appellant was granted leave to remain in the UK from 30 August 2014 until 28 February 2017 because, we infer from the surrounding evidence, the respondent accepted that he was in a genuine and subsisting relationship with a partner who had settled status and/or because the respondent accepted that he had a genuine and subsisting parental relationship with their British citizen daughter, "M", who had been born on 1 October 2011.

3. On 19 February 2016, the appellant's leave was curtailed so as to expire on 9 April 2016, due to the breakdown of his relationship with his partner. On 25 February 2017, the appellant made a further human rights application, which was refused. His appeal against this decision was successful, and he was granted a further period of leave to remain between 12 February 2020 and 12 February 2021, so as to enable him to pursue Family Court proceedings for contact with M. The outcome of the Family Court proceedings was that the appellant was only granted indirect contact with his British citizen daughter.

4. On 16 October 2021 the respondent refused the appellant's application for further leave to remain on human rights grounds made on 8 February 2021. The respondent said that the appellant did not meet the eligibility relationship requirement in Appendix FM as he had not provided any evidence either of direct access to his child, or that he was taking an active role in the child's upbringing. Although he might have indirect contact with his child through letters and making a financial contribution to her upbringing, this was not considered evidence of a genuine and subsisting parental relationship with his child.

5. The respondent said that the appellant did not, in the alternative, meet the requirements of paragraph 276ADE(1)(vi). He had resided in Cote d'Ivoire up to the age of 38, which included his childhood, formative years and a significant portion of his adult life. Furthermore, he had told them in his application that he remained in contact with family and friends in Cote d'Ivoire, and so he was part of a social group in that country and had cultural ties to it.

6. Consideration had been given as to whether there were exceptional circumstances in his case. He claimed that he had been financially supporting his father, daughter and friends in Cote d'Ivoire. However, he

was free to return to Cote d'Ivoire and legally obtain employment there. The qualifications and experience he had gained in the UK would assist him with this. He had provided no evidence that he would be unable to seek employment in Cape d'Ivoire, or that he would unable to maintain himself there as he did in the UK, or that he would not be able to continue providing support to his family and friends after leaving the UK.

The Decision of the First-tier Tribunal

7. The Decision of Judge Brewer followed a substantive hearing which had taken place on 11 January 2023 and 22 March 2023 at Taylor House. Ms Anifowoshe of Counsel appeared on behalf of the appellant, and the respondent was represented by a Presenting Officer.

8. The explanation for the hearing being adjourned part-heard is to be found in Case Note Number 5 on the CCD file.

9. During cross-examination on 11 January 2023, the appellant gave evidence that he was financially supporting relatives in the Ivory Coast and that he could provide documentary evidence of this support. The appellant's Counsel applied to have the evidence of financial dependency admitted. The respondent objected to the late admission of such evidence.

10. Judge Brewer ruled in favour of the appellant. Her reasoning, according to the Case Note, was that the central issue in the appeal was whether there were very significant obstacles to the appellant's reintegration into the Ivory Coast. Material to this issue would be the support network available to the appellant on return. The evidence, which only emerged in oral evidence - having not been addressed in the witness statements - was that the appellant financially supported his relatives in Ivory Coast.

11. She was satisfied that money transfers evidencing this support were material and relevant evidence. While this evidence was very late, she was satisfied, given its materiality, that it was in the interests of justice to admit such evidence.

12. Judge Brewer adjourned the appeal part-heard in order to afford the respondent an opportunity to engage with the new material.

13. The appellant made a supplementary witness statement dated 26 January 2023. He exhibited to his statement an activity report which showed his money transfers to family members in Cote d'Ivoire from 1 November 2019 to 1 January 2023; his bank statements from November 2021 to January 2023; and his payslips from January 2019 to December 2022 issued by his employer.

14. The appellant said that he used to earn on average around £1,800 a month until about nine months ago, and he was currently earning on average £2,200 a month. His personal expenses were £842.53 a month,

as could be seen from his bank statements; and on average he sent between £500 and £900 to Cote d'Ivoire every month, depending on the needs of his family members.

15. The appellant identified by name 26 individuals whom he said he was now supporting in Cote d'Ivoire, comprising a mixture of family members and family friends.

16. He expressed the belief that, if he was no longer able to financially support his family from the UK, then on return to his home country not only would they struggle to provide for their daily needs, but he would also struggle to provide for himself. He had not had a proper career in Cote d'Ivoire before he left there, and he would find it extremely difficult to get a job that would be able to provide for both his and his family members' day-to-day needs.

17. In the Decision at para [4], the Judge said that the nub of the appellant's case was that although he was a teacher in the Cote d'Ivoire before arriving in the UK, because of his age now he would struggle to secure employment in the Government sector. He was currently the primary earner in his family, sending money back to the Cote d'Ivoire to support his elderly father and his daughter, who was at university there. His father lived with the appellant's nephews. He had 17 siblings, but he was only on close terms with his full brother. The other siblings were half-siblings and only shared a father with the appellant. He financially supported his brother who, although actively looking for work in Cote d'Ivoire, was currently unemployed.

18. At para [5], the Judge identified as the issues in the appeal as being, firstly, whether there would be very significant obstacles to the appellant's integration if he were to return to Cote d'Ivoire. Secondly, the appellant claimed to have a family life with his British daughter, and so the other issue was whether it would be a breach of Article 8 outside the Rules if he was removed from the UK.

19. The Judge's analysis, reasons and findings began at para [10]. She said that she had had the benefit of hearing the oral evidence of the appellant, which was tested in cross-examination by the Presenting Officer. She was satisfied that the appellant had given a detailed account of his circumstances in both the UK and Cote d'Ivoire. This was an unembellished account which was consistent with his written evidence. She was satisfied to the civil standard that the evidence he gave was an account that he believed to be a true account. However, for the reasons set out below, she did not accept on the evidence before her that it was more probable than not that the appellant would face very significant obstacles to his re-integration into Cote d'Ivoire. The Judge continued in para [11] as follows:

> "Firstly, the appellant is a qualified teacher who was able on his own evidence to support his family financially in the Cote d'Ivoire before he came

> to the UK. There was no Country Evidence before me to support his assertion that he is now *'aged-out'* of government teaching jobs. There is no country evidence before me that would support his assertion that as a qualified teacher, he would face difficulties securing employment on return to Cote d'Ivoire."

20. At para [12], the Judge held that, secondly, the appellant had resided in the Cote d'Ivoire from birth until 2014, when he was around the age of 38. He remained in regular contact with family in the Cote d'Ivoire. His father lived with his nephews and his daughter currently lived with his brother. He had gained his qualifications in Cote d'Ivoire, spoke the language of the country, had over 38 years of living experience there and continued to have close familial ties within the country. All of these factors would assist him in his re-integration into Cote d'Ivoire.

21. The Judge then turned to deal with the appellant's Article 8 claim outside the Rules. At [14], she held that she did not consider that his biological ties with his British daughter (a minor) were so severed as to bring him outside the scope of Article 8(1) family life. However, she did not find that his removal from the UK would be a disproportionate measure.

22. At [15], she set out the factors weighing in favour of the respondent, and at [16], she set out the factors which she took into account on the appellant's side. The Judge concluded at [18] that, assessing all the evidence in the round, it would not be disproportionate to remove the appellant from the UK.

The Grounds of Appeal to the Upper Tribunal

23. Ms Anifowoshe settled the grounds of appeal. Ground 1 was that the Decision was not in accordance with the Immigration Rules, and Ground 2 was that the Decision was not in accordance with Article 8 ECHR.

24. Under Ground 1, she submitted that the Judge Brewer had failed to consider the abundance of evidence submitted by the appellant showing that he was the main source of financial support for his family in Ivory Coast. Contrary to what was stated at para [11], the appellant gave evidence that he had barely worked for a year as a trainee teacher before coming to the UK and therefore he did not have the experience to reintegrate into the profession as a teacher, because he was not fully qualified and had now been out of the Ivory Coast for over 9 years.

25. Under Ground 2, she submitted that the appellant continued to seek direct contact with his British citizen daughter, and his return to Ivory Coast would make this virtually impossible - not only because of the distance that would be put between her and the appellant, but also because he would not be in the financial position to instruct solicitors and barristers to continue to attempt to secure direct contact with his daughter.

The Reasons for the Eventual Grant of Permission to Appeal

26. Permission to appeal was refused by the First-tier Tribunal, but on a renewed application to the Upper Tribunal permission to appeal was granted on 2 November 2023 by Upper Tribunal Judge Reeds for the following reasons:

> 1. The principal issue was whether there were very significant obstacles to the appellant's integration. The grounds are arguable where they appear to raise an issue of a mistake of fact relating to the appellant's employment and thus his ability to integrate when the FtTJ undertook his factual assessment (see paragraph 11). The written evidence on the CCD file does not deal with issues of employment or the previous circumstances in Ivory Coast and it is unclear on what basis the findings were made. It will be for the appellant's representatives to support the grounds on this issue.
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> 2. It is further arguable that the FtTJ failed to make any factual findings or assessment on the account given by the appellant as to the extensive financial support he provided to his family. The CCD file demonstrates that the FtTJ specifically adjourned the hearing and made a direction for that financial evidence to be provided. As the grounds set out, there were no findings in his assessment on this issue either under the Rules or outside the Rules. Whether that could be described as a "very significant obstacle to integration" with regards argument and materiality would have to be established.
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> 3. Whilst the grounds refer to the circumstances of the British citizen daughter, the family proceedings have concluded. The appellant has indirect contact with his daughter and by itself may not arguably demonstrate a very significant obstacle to integration as that type of contact was of a kind which could be continued out-of-country. However, the FtTJ did not arguably assess whether the appellant would be able to do so, and this was a matter raised in the skeleton argument. I do not restrict the grounds. Again, the materiality of any error would need to be established.

The Hearing in the Upper Tribunal

27. At the hearing before us to determine whether an error of law was made out, Ms Anifowoshe developed the grounds of appeal by reference to her skeleton argument dated 30 November 2023 in which she expanded upon the case she had put forward in the renewed application for permission. On behalf of the Secretary of State, Mr Melvin submitted that the appeal had no merit. This was because the appeal to the First-tier Tribunal never had a realistic prospect of success. After briefly hearing from Ms Anifowoshe in reply, we reserved our decision.

Discussion and Conclusions

28. As is clarified in Ms Anifowoshe's skeleton argument, the appellant's case under Ground 1 is that the Judge misdirected herself in para [11] as to the evidence that she had received from the appellant. Ms Anifowoshe submits that the Judge made her finding in the first sentence of para [11] "*without any evidence*".

29. On the question of whether the Judge misdirected herself as to the thrust of the appellant's oral evidence at the hearing, Ms Anifowoshe was unable to point us to any record of the appellant giving oral evidence to the effect that he was only an unpaid trainee teacher before he left Cote d'Ivoire and so he was not financially supporting anybody.

30. The only reference to the appellant being a trainee teacher that we have been able to find is in the appellant's witness statement dated 30 November 2023, which was not before Judge Brewer.

31. Mr Melvin said he had the Presenting Officer's minute from the hearing, which he offered to produce to show that the Judge had directed herself appropriately at para [11]. However, Ms Anifowoshe objected to this minute being admitted into evidence, and we declined to look at it, as it had not been filed in a timely fashion.

32. Nonetheless, the burden rests with the appellant to show that the Judge was wrong to hold that he was a qualified teacher in Cote d'Ivoire whose oral evidence was that he was able to support his family financially in the Cote d'Ivoire before he came to the UK.

33. We find that the appellant has not shown that the Judge was mistaken in her understanding of the appellant's oral evidence.

34. In his witness statement dated 30 November 2023, the appellant does not claim that he did not earn money as a trainee teacher. All he says is that he was not earning an income to support all the numerous family members that he is now able to support with the income that he earns in the UK.

35. Since the appellant does not now claim (a) that he did not have an income as a teacher, or (b) that he was not supporting <u>some</u> family members from this income, we consider it is very unlikely that Judge Brewer misunderstood his oral evidence about his circumstances in Cote d'Ivoire before he came to the UK.

36. In finding that the appellant supported his family financially in the Cote d'Ivoire before he came to the UK, the Judge was not implying that the appellant had previously been earning in Cote d'Ivoire the same level of income that he currently enjoyed or that he had earned enough to be able to support a much wider circle of family members and friends than the three close family members to whom the Judge goes on to refer at para [12], comprising the appellant's father, brother and daughter.

37. The Judge would have understood from the appellant's supplementary witness statement dated 26 January 2023 that his evidence was that his UK income enabled him to support many more people in Cote d'Ivoire than previously. Although he referred collectively to all 26 of his beneficiaries as "family members", the appellant not only identified each of them by name,

but he also described precisely how each of them was related to him, or who was just a family friend, as the case might be.

38. So, in singling out the appellant's closest family members in para [12], the Judge was deliberately focusing on those beneficiaries whom she regarded as being most important to the appellant.

39. Although the Judge had allowed the appellant to adduce documentary evidence to show the extent of the financial support that he was providing to recipients in Cote d'Ivoire on the basis that such evidence was relevant to the appellant's ability to reintegrate, it was open to her, having heard the appellant's oral evidence and having reflected on the issues in dispute, to treat such evidence as being largely irrelevant in the final analysis, and therefore not to make any specific findings on it, beyond rejecting – by necessary implication – the claim in the supplementary witness statement that, without his UK income, both he and his closest family members in Cote d'Ivoire would struggle to survive.

40. The Judge was silent on the question of the impact on all 26 beneficiaries of the loss of the appellant's UK income, but her silence on this matter does not constitute an error of law as it was not an issue which required to be resolved.

41. For the above reasons, Ground 1 is not made out. The Judge gave adequate reasons for finding that there would not be very significant obstacles to the appellant's integration and, in reaching that conclusion, the Judge is not shown to have made a material mistake of fact as to the appellant's circumstances prior to coming to the UK or to have failed to resolve an issue that was material to the question of the appellant's ability to reintegrate into life and society in the country of return.

42. As to Ground 2, the Judge did not weigh in the balance in her proportionality assessment the fact that it would be very difficult, if not impossible, for the appellant to pursue further Family Court proceedings from the country of return. But we do not consider that the Judge was required to do so. She was not obliged to deal with every point raised by appellants' Counsel, and it was open to the Judge to treat this point as being so weak that it did not merit being weighed in the balance.

43. On the respondent's side of the equation, the Judge took into account that there were no ongoing family proceedings specifically to change the appellant's mode of contact with his daughter to direct contact; that his removal from the UK would not therefore change the current quality of his contact with his British daughter (i.e. indirect contact); and that, in light of the Family Court Order allowing only indirect contact, she did not find that it would be in the best interests of his British citizen daughter that the appellant remained in the UK.

44. On the appellant's side of the equation, the Judge took into account that the appellant had family life with his British citizen daughter, albeit that

the quality of the family life was one of indirect contact; and that the appellant had had periods of lawful leave while resident in the UK, albeit that his leave had been precarious throughout his stay in the UK.

45. We consider that the Judge thereby adequately addressed by necessary implication the matter raised in Ground 2. As the appellant was not pursuing ongoing Family Court proceedings to change his mode of contact with his daughter to direct contact, it was not disproportionate to require him to return to Cote d'Ivoire.

46. The Judge did not factor into the proportionality assessment the fact that the appellant would not be able to support friends and family in his home country to the same extent as he had been supporting them in the UK. However, we do not consider that this was a material omission, as his ability to provide such funding was not a core aspect of his private life, and it was not a matter which was reasonably capable of outweighing the public interest in the appellant's removal.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an anonymity order. However, we consider that it is appropriate to make an anonymity order for these proceedings in Upper Tribunal in order to protect the anonymity of the appellant's daughter.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
15 December 2023