IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001110

First-tier Tribunal Nos: HU/53407/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 28th of June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

ISSOUF SEGDA
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms. S. Akinbolu, Counsel instructed by TM Legal Services
For the Respondent: Ms. A. Everett, Senior Home Office Presenting Officer

Heard at Field House on 18 June 2024

DECISION AND REASONS

1. In a decision issued on 15 May 2024 I set aside the decision of the First-tier Tribunal. The appeal came before me to be remade.

The hearing

2. I heard oral evidence from the appellant. Both representatives made oral submissions. I reserved my decision.

3. I have taken into account the documents in the appellant's Upper Tribunal bundle (231 pages, in three parts, "AB"), and the respondent's bundle prepared for the First-tier Tribunal (67 pages, "RB"). I have also taken into account the transcript of the appellant's interview with the respondent on 15 December 2022.

4. The agreed issues before me were whether the appellant met the requirements of the immigration rules in relation to his family and private life, and then more

widely under Article 8. In relation to family life, the issue was whether he had a genuine and subsisting relationship with his children. In relation to private life, the appellant has been in the United Kingdom for over 20 years as at the date of the hearing.

Burden of proof

5. The burden of proof lies on the appellant to show that the respondent's decision is a breach of his rights, and/or those of his children, to a family and private life under Article 8 ECHR. The standard of proof is the balance of probabilities. However where an application is refused with reference to the suitability requirements, the burden lies on the respondent to show that the application should have been refused on this basis.

The respondent's case

6. The respondent's case is set out in the decision dated 28 February 2023.

The appellant's case

7. The appellant's case is contained in the documents set out above and in the oral evidence at the hearing. I do not intend to set out the evidence here as it is to be found in these documents and in the record of proceedings. I will refer to the evidence as and when necessary in coming to the reasons for my decision.

Findings and conclusions

Appendix FM

8. In relation to the suitability requirements, at the outset of the hearing Ms. Everett provided a copy of the transcript of the interview carried out with the appellant. She acknowledged that it was very short. I gave my preliminary view that the respondent had not made out that the application should have been refused with reference to the suitability requirements. In submissions Ms. Everett acknowledged that she had not pursued this issue in cross-examination, but said that she was providing the transcript for completeness.

9. I find that when the appellant made his application he was in a relationship with his partner. She participated in the application and provided her passport. The application was made on 24 May 2021. The appellant was not invited for an interview until 7 December 2022. The interview took place on 15 December 2022. The appellant was asked at Q10 whether there had been any periods of separation and said that he had been separated "for almost two years". This was not followed up, and Q11 asks whether he has any children. At Q19 he was asked when he and his spouse moved into their current address, and he replied that they had split up two years ago.

10. While I find that these answers are not entirely accurate, and are a bit vague, the interviewer did not follow them up but proceeded to stick to what looks like a standard pre-prepared set of questions used to ascertain whether a marriage is a marriage of convenience, even though this was the appellant's third application for renewal of his leave to remain on the basis of his relationship both with his partner, and importantly with his children.

11. The appellant has provided evidence which shows that in October 2021 he was still at the same address as his ex-partner. I find that they were living together at the time of the application, which she supported. I find that the interview took place 19 months after the application was made. I find that the appellant said that they had split up about two years ago, but no attempt was made by the interviewing officer to follow this up and ask for more precise details. I find that the respondent has not shown that deception was used in the application, and that it should not have been refused with reference to the suitability requirements.

12. I have considered whether the appellant has shown that he has a genuine and subsisting parental relationship with his children to meet paragraph EX.1(a) of Appendix FM. As accepted by Ms. Everett the decision is not very helpful, and I accept the submission from Ms. Akinbolu that the decision should have addressed the appellant's relationship with his children, which it did not do.

13. I find that this application was the third application for renewal of leave based on his relationship with his children. The respondent had previously accepted that the appellant had family life with his children. While he had separated from his partner and they did not live together as a family, I find that there was no evidence that his family life had been ruptured to such a degree that he did not have a parental relationship with his children.

14. Taking all of the evidence into account, I find that the appellant has a genuine and subsisting parental relationship with his children. He has three children, the eldest of whom is over 18. Ms. Everett accepted that there was evidence of contact with his children but that it was "pretty sparse". I find that the appellant sees his children once or twice a month. I find that initially, his ex-partner did not want him to have contact with them, but that this has changed. I find that the appellant travels to where they live to see them. He does not see them at their home, but they meet in the park and local area. He gave evidence that he will take his daughter to football training if she asks. He said that he also saw his children when his ex-partner needed him to do so, for example when his daughter hurt her knee at a football trial, and his ex-partner asked him to come. I accept the evidence of the appellant that he sees his children on a regular basis.

15. The appellant gave evidence that the children moved out of the area to be closer to their schools. They both attend grammar schools which is why they are no longer in the same area where they lived as a family. He gave evidence that he is planning to move closer to his children. He lives in one room in a house share and so does not have room for them to stay with him. I accept this evidence, and find that it casts no doubt on the genuine and subsisting parental relationship that the appellant cannot have his children to stay with him.

16. I find that the appellant maintains contact with his children over WhatsApp. He provided evidence of this contact (pages 123 to 144). This supported his oral evidence, for example his knowledge of what his eldest daughter is doing. He gave evidence that his eldest daughter supported his appeal, but that she was in Burkina Faso for her grandmother's funeral.

17. I find that the appellant supports his children financially. He provided his bank statements which show regular monthly payments (211 to 219AB).

18. I have also taken into account the statement from the appellant's daughter dated 1 May 2024 (119AB). While short, I accept that this is evidence that the appellant continues to play a role in his children's lives. I have also taken into account the statement from his friend dated 1 May 2024 (121 AB). I find that the appellant continues to have a genuine and subsisting parental relationship with his children. I find that the appellant has shown that he meets the requirements of paragraph EX.1(a) of Appendix FM to the immigration rules.

Paragraph 276ADE(1)(iii)

19. I further find that, as at the date of the hearing, and as accepted by Ms. Everett, the appellant has been in the United Kingdom for over 20 years. He came to the United Kingdom on 1 December 2003, so as at the date of the application he had been here for only 17 and a half years. He has had leave to remain since 29 January 2016. I find that, were he to make a fresh application at the date of the hearing, he would succeed on the basis of 20 years residence in the United Kingdom, under the provisions which have replaced paragraph 276ADE(1)(iii).

Article 8

20. I have considered the appellant's appeal under Article 8 in accordance with the case of Razgar [2004] UKHL 27. I find that the appellant has a family life with his children sufficient to engage the operation of Article 8. I further find that he has been in the United Kingdom for over 20 years and has a private life such as to engage the operation of Article 8. I find that the decision would interfere with his family and private life.

21. Continuing the steps set out in Razgar, I find that the proposed interference would be in accordance with the law, as being a regular immigration decision taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would be significant and that it would not be proportionate.

22. In assessing the public interest I have taken into account section 19 of the Nationality, Immigration and Asylum Act 2002. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. I have found above that the appellant meets the requirements of the immigration rules so there will be no compromise to effective immigration control by allowing his appeal.

23. In accordance with TZ (Pakistan) [2018] EWCA Civ 1109, I find that the appellant's appeal falls to be allowed. This case states at [34]:-

> "That has the benefit that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article

> 8(1), for the very reason that it would then be disproportionate for that person to be removed."

24. In line with this, the headnote to OA and Others (human rights; 'new matter'; s.120) Nigeria [2019] UKUT 00065 (IAC) states:

> "(1) In a human rights appeal under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002, a finding that a person (P) satisfies the requirements of a particular immigration rule, so as to be entitled to leave to remain, means that (provided Article 8 of the ECHR is engaged), the Secretary of State will not be able to point to the importance of maintaining immigration controls as a factor weighing in favour of the Secretary of State in the proportionality balance, so far as that factor relates to the particular immigration rule that the judge has found to be satisfied."

25. The appellant spoke in English at the hearing and I find that he can speak English (section 117B(2)). The application was not refused with reference to the financial requirements, and I find that he is financially independent (section 117B(3)).

26. In relation to sections 117B(4) and 117B(5), these do not apply to a relationship with children. The provisions of paragraph EX.1(a) mirror those set out in section 117B(6), and I have found above that the appellant meets the requirements of paragraph EX.1(a). I find that the appellant's children's best interests are served by the appellant remaining in the United Kingdom, and continuing the family life which he has had with his children here since their births.

27. In relation to his private life, it would not be proportionate to force the appellant to make a fresh application as he meets the requirements of paragraph 276ADE(1)(iii), given the upheaval that this would create in terms of his lack of status and implications for his employment, especially given that he supports his children financially.

28. Taking into account all of the above, I find that the appellant has shown that the decision is a breach of his rights, and those of his children, to a family and private life under Article 8.

Notice of Decision

29. The appeal is allowed on human rights grounds, Article 8. The appellant meets the requirements of paragraph EX.1(a) of Appendix FM and paragraph 276ADE(1)(iii) of the immigration rules.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
23 June 2024