Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA011282017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 June 2017	**On 17 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

IGNATIUS NWABUEZA IZAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C A Decker, friend.
For the Respondent: Mr L Tarlow, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Swaney promulgated on 6 April 2017 dismissing the Appellant's appeal against a decision of the Respondent dated 13 January 2017 refusing a claim for protection.

2. The Appellant is a citizen of Nigeria born on 6 April 1984. His immigration history is set out in the cover sheet of the Respondent's bundle before the First-tier Tribunal, and at paragraph 6 of the Respondent's 'reasons for refusal' letter (RFRL)

dated 13 January 2017. It is further summarised in the decision of the First-tier Tribunal Judge at paragraphs 2-4.

3. In such circumstances I do not repeat the entirety of the history here. For present purposes, however, I note the following features of the case history:

(i) The Appellant entered the UK on 20 February 2009 with entry clearance as a student valid until 30 June 2010.

(ii) An application for further leave to remain as a Tier 4 student was made on 9 June 2010, and although initially refused, and refused again on reconsideration, was in due course granted on 7 September 2010 conferring leave until 31 May 2013.

(iii) An application for an EEA residence card made on 24 May 2013 was refused on 22 December 2013 on the basis that the Appellant had entered a sham marriage.

(iv) A subsequent appeal against the refusal of a residence card was dismissed on 28 October 2014, and permission to appeal to the Upper Tribunal was refused on 17 December 2014.

(v) The Appellant was arrested on 6 February 2016 and cautioned in respect of fraud; he was also served with documentation as an overstayer.

(vi) On 10 February 2016 the Appellant made a human rights claim, which was refused with an out-of-country right of appeal on 19 February 2016.

(vii) The Appellant was detained upon reporting on 7 July 2016.

(viii) On 25 July 2016 the Appellant applied for asylum.

(ix) A substantive asylum interview was conducted on 28 September 2016. The asylum claim was based on the Appellant's sexuality; he claimed to be bisexual. During the course of the interview he claimed currently to be in a relationship with a woman, Ms Amee Bishop, but not to be cohabiting with her (questions 51–59, and see also questions 228–230). He claimed to be a "*Christian by birth*", but could not remember the last time he had attended church, and described himself as "*not really practising Christianity*" (questions 154-156). He also indicated that he had not worked since 2014 (question 48).

4. The application for asylum was refused by the Respondent for the reasons set out in the RFRL: in essence the Respondent did not accept the Appellant's claim in any material respect – specifically his claimed sexuality was rejected, as was his claim to have been arrested and tortured in Nigeria. The Respondent also considered

human rights grounds with reference to Article 8 private and family life, but found that the Appellant did not satisfy the requirements of the Immigration Rules and that there were no exceptional circumstances to warrant departure from the Rules.

5. The Appellant appealed to the IAC. His appeal was dismissed on both protection grounds and human rights grounds for reasons set out in the Decision and Reasons of First-tier Tribunal Judge Swaney promulgated on 6 April 2017.

6. The Appellant sought permission to appeal to the Upper Tribunal. In the first instance he raised grounds of challenge in respect of both the dismissal of his protection claim and his human rights claim. Permission to appeal was granted by First-tier Tribunal Judge Kelly on 3 May 2017, but limited to only some of the human rights grounds of challenge. Permission to appeal was not granted in respect of the challenge to the dismissal of the protection claim.

7. The Appellant, being not entirely satisfied with the limited basis of the grant of permission to appeal, renewed his application for permission to appeal to the Upper Tribunal. In doing so he only pursued challenge in respect of the human rights grounds in respect of which Judge Kelly had refused permission; he did not renew the protection claim grounds. On 31 May 2017 Upper Tribunal Judge Smith granted further permission to appeal in respect of the remaining human rights grounds, observing that Judge Kelly had appeared to reject such grounds on the basis that they were contingent upon the success of the other human rights grounds, and that such reasoning did not justify refusing permission to appeal.

Consideration of 'error of law'

8. At the core of the Appellant's case as it is now pursued before the Upper Tribunal is his claim to be in a parental relationship with his partner's child. The First-tier Tribunal Judge rejected the submission made before her in this regard: "*I do not accept on the basis of the evidence before me that he has stepped into the shoes of a parent. I find that he does not have a parental relationship with his partner's child for the purposes of section 117B(6) of the 2002 Act*" (paragraph 61).

9. The Appellant's primary basis of challenge in this regard is an assertion that the Respondent's representative conceded that there was a genuine parental relationship, and a submission that the Judge was in error in not accepting such a concession. Further or alternatively it is argued that the Judge was in any event in error in finding that a parental relationship did not exist.

10. For the reasons set out below, I reject both the primary submission, and the alternative argument. I am unable to identify, and do not accept, that any such concession was made by or on behalf of the Respondent. Even if it were otherwise the Judge was not obliged to accept such a concession, and has in any event set out entirely sustainable reasons for her conclusion that there was no parental relationship.

11. The residual grounds – that the Judge failed to undertake a 'best interests' assessment in respect of the child, and erred in not recognising that the **Zambrano** principle was applicable – are, as both Judge Kelly and Judge Smith recognised, contingent upon the success of one or other of the first two grounds. Given that I have rejected the first two grounds it is not necessary to go on to consider the third and fourth grounds – and indeed, for the avoidance of any doubt, I conclude that in light of her sustainable conclusions in respect of parental relationship there was no error on the part of the Judge in respect of either 'best interests' or **Zambrano**.

12. The Appellant's grounds at paragraphs 12 and 14 assert the following:

> "*13. Furthermore, at the hearing, it was submitted that the appellant was a qualifying parent within Section 117B(b) of the Nationality Immigration and Asylum Act 2002.*
>
> *14. The Judge specifically asked the presenting officer if she agreed to this, to which she replied in the affirmative.*"

13. The reference to 'Section 117B(b)' is in context clearly intended to be a reference to section 117B(6) of the 2002 Act. However, there is no such creature as a 'qualifying parent' identified therein. There is, however, reference to a 'qualifying child', which is further defined at section 117D(1). Judge Swaney's record of proceedings, which is a matter of record on file and the relevant contents of which I drew to the representatives' attention at the hearing, records the Judge asking the Presenting Officer in the course of submissions "*Is he qualifying child*", to which the Presenting Officer is recorded as replying "*Yes*".

14. It seems to me absolutely clear that the Appellant and/or his representative has misunderstood the nature of this exchange. The enquiry, and the concession, were in respect of the status of the child and were not in respect of the nature of the relationship between the child and the Appellant. Nothing further is advanced by the Appellant by way of supporting evidence of the assertion that a concession was made by the Respondent; the Respondent denies that a concession was made in the Rule 24 response dated 24 May 2017.

15. In all such circumstances I find that the Respondent at no point made a concession to the effect that the Appellant had a parental relationship with his partner's child, and accordingly and necessarily I reject the notion that the Judge 'went behind' such a concession.

16. The Appellant's alternative submission is in my judgement in substance an attempt to reargue the issue of parental relationship. In effect it is said that the findings of the Judge in respect of the nature of the relationship between the Appellant and his partner's child were such that she should have concluded that there was a genuine parental relationship. I do not accept that argument either as identifying an error of law, or otherwise being of factual merit.

17. In this context the Appellant emphasises in particular the following aspects of the Judge's findings: "*the appellant is in a genuine relationship with Amy Bishop*" (paragraph 51); "*the appellant has established a relationship with his partner's son*" (paragraph 52).

18. It is also pleaded in the Grounds, and amplified before me in oral submissions, that the Judge ignored case law and guidance on the meaning of parental relationship.

19. Additionally Mr Decker has urged upon me consideration of factual elements of the case in respect of financial support and involvement in the child's christening. Indeed it is said that apart from the christening there have not really been any significant decisions in the child's life of the sort that involvement in which might provide evidence of a parental role. For the main part it seems to me that in pressing these arguments Mr Decker was largely redeploying the submissions before the First-tier Tribunal, or otherwise seeking to reargue the case on its merits in an attempt to persuade me to reverse the findings of the Judge and not raising arguments of any error of law. Accordingly, in so far as the Appellant must base his arguments in respect of error of law on the foundation of the favourable findings of the Judge, he is essentially left with the two findings identified at paragraph 17 above.

20. The Appellant's core submission, therefore, really comes down to the this: it is argued that because the Judge found that the Appellant had established a relationship with his partner's son she should as a matter of course have concluded that it was a parental relationship. Plainly that submission is illogical: an adult relationship with a child is not inevitably a parental relationship even if the adult is in a relationship with one of the child's natural parents. In my judgement the Judge went on to explain clearly why she concluded that the relationship that existed between the Appellant and his partner's son could not be characterised as a parental relationship.

21. The Judge's key reasoning is to be found at paragraph 61. After a careful and thorough review of the evidence and applicable law in the preceding paragraphs (paragraphs 51–60), the Judge states this:

> "*Although I accept the appellant attends medical appointments with his partner's son, there was no evidence that he plays any role in making decisions about what care or treatment the child receives. While I accept the appellant plays a role in caring for his partner's son, there was no evidence to suggest the appellant plays a role in making decisions about his physical or emotional needs either independently or jointly with his partner. The extent to which the appellant is making an active contribution to his partner's son's life was not clear. I note the evidence of bonding between the appellant and his partner son, but note that the appellant's partner's aunt also lives with them and is likely to have also bonded with the child and to play a similar role in the child's life as the appellant. I find the appellant is one of the adults who cares for the child, but I do not accept on the basis of the evidence before me that he has stepped into the shoes of a parent. I find that he does not have a parental relationship with his partner's child…*"

22. In short, the Judge concluded that the Appellant was involved in the child's life on the basis that he was the boyfriend of the child's mother and was presently living in the same household, but that the evidence did not support the contention that his role had assumed a parental nature. That was a conclusion entirely open to the Judge and one that I consider she adequately and sustainably reasoned.

23. I do not accept that the Judge failed to have regard to relevant evidence. In my judgement she plainly gave consideration to those aspects of the case presented by the Appellant in support of his assertion to be in a parental relationship with his partner's child. Indeed in some respects she accepted the evidence presented as a matter of primary fact. For example: she accepted photographic evidence showed the Appellant with the child at various points in his life (paragraph 52); she noted that the GP had observed signs of bonding (paragraph 52, and also see paragraph 60); she accepted that the Appellant played a role in caring for the child (paragraph 61). The real point of departure between the Judge and the Appellant is that the Judge did not consider that such primary facts constituted a parental relationship. Ultimately, in my judgement that was a mixed question of fact and law for the Judge, and the Appellant disagrees with her conclusion. I am not satisfied, however, that in articulating the disagreement the Appellant has identified any error of law.

24. As regards the applicable law I do not accept that the Judge in any way misdirected herself. I note in particular that the Judge stated that she did not accept that the Appellant has "*stepped into the shoes of a parent*" (paragraph 61). In my judgement this was clearly a conscious echo of the words used in **R. (on the application of RK) v Secretary of State for the Home Department (s. 117B(6); "parental relationship")**

IJR [2016] UKUT 00031 (IAC) – see at paragraphs 38 and 43 , and at paragraph 2 of the headnote - to which the Judge was directed by the Appellant's representative, and which she duly analysed at paragraph 58. There is nothing to suggest that the Judge misunderstood this case, and everything to suggest that she applied its principles to the facts as she found them. It is to be noted that **RK** involves detailed and careful consideration of the Respondent's guidance in respect of parental relationships, and again I can identify nothing in the decision of Judge Swaney to suggest that she disregarded such guidance or reached a conclusion wholly incompatible with such guidance and/or not open to her on the facts and evidence.

25. In all such circumstances I reject the Appellant's challenge to the decision of the First-tier Tribunal.

26. That really brings the challenge to a conclusion. However, for completeness, and in deference to some of the submissions pursued in respect of the merits before me, I consider it helpful and appropriate to make the following observations.

(i) At the date of the asylum interview, just over 5 months before the appeal hearing before Judge Swaney, the Appellant stated that he was not living with Ms Bishop. Before the First-tier Tribunal Ms Bishop suggested that the couple had been cohabiting for one year, whereas the Appellant gave an estimate of 6 months, suggesting that perhaps Ms Bishop had included a period during which he would from time to time stay at her home. Be that as it may, at its best, on his own evidence the Appellant had only been cohabiting with his partner – and thereby only living in the same household as her child - for a period of no more than 6 months by the date of the hearing before Judge Swaney.

(ii) I note that in the context of European Community law the concept of a 'durable relationship' between a couple is ordinarily premised on establishing that they have been living together in a relationship akin to marriage for two years. Whilst I do not suggest that the concept of a durable relationship with a partner is congruent with establishing a parental relationship with the same partner's child, nonetheless it seems to me that it might reasonably require quite cogent and/or compelling evidence to show that a parental relationship has formed with the partner's child in a shorter timeframe than it takes to demonstrate a durable relationship with the child's natural parent.

(iii) The Appellant has asserted as an example of his involvement in an important decision relating to the child, the child's christening. The Grounds of Appeal, for example, plead that the Appellant and his partner both agreed a date which was subsequently postponed until the Appellant was released from detention. There was no supporting evidence of this claimed circumstance before the First-tier Tribunal, although the Appellant has now produced a letter dated 7 May 2017 from the vicar of his church which mentions that the child was recently baptised: the letter is silent as to the Appellant's involvement with

the decision that the child should be baptised. However, in any event, it seems to me that arranging a date upon which the Appellant could attend a christening is not in itself evidence of his involvement in a decision that the child should be christened. In this context I remind myself that at interview the Appellant stated that he did not consider himself to be a practising Christian. The reasonable inference to be drawn is that it was a decision of the mother that there be a christening, albeit that she wished her partner to be able to attend such an event. I am not satisfied that there is anything in the available evidence, or further to the submissions of Mr Decker, that establishes the Appellant was involved in a decision that his partner's child should be christened.

(iv) The Appellant made an application to adduce further evidence. In addition to the letter from the vicar of the Appellant's church, the evidence related to his claimed financial support of his partner and her child, and was by way of a bank statement purportedly showing payments variously in favour of Ms Bishop and her son over the period 27 February 2017 to 19 May 2017. Similar evidence was before the first-tier Tribunal covering the period 8 March 2016 to 7 February 2017.

(v) For my own part I do not consider that the extracts from the bank statements - either by way of those before the First-tier Tribunal, or those it is now sought to adduce before the Upper Tribunal – provide reliable evidence of the assertion that the Appellant is genuinely making a financial contribution towards his partner and her child. The statements have been printed in such a way as to disclose only such payments as the Appellant seeks to rely upon: this is evident from a consideration of the balance figure which fluctuates independently of the sum of the transactions shown. (In this context it is apparent that the online statement in respect of an internet banking account contains a 'Filter transactions' option that permits the user to view – and also therefore print – only particular transactions.) The Appellant has, in effect, chosen not to make full and frank financial disclosure: as such it is impossible to see the source of the funds in his account. I remind myself that he claimed at interview that he had not worked since 2014, yet the sums that he claims to have been genuine financial contributions amount to over £1800 between 27 February and 19 May 2017 (i.e. on average more than £150 per week). Mr Decker suggests that the Appellant was able to source such funds from savings and from financial contributions from others. There is no evidence of any such savings or financial contributions.

(vi) It is to be recalled that the Judge found the Appellant "*to be a largely incredible witness*" (paragraph 37), observing that he "*has on two occasions made applications to remain in the United Kingdom on the basis of relationships with women which have been found to be a sham… [and] he was cautioned for an offence of using a fraudulent document*" (paragraph 38), and also found that the Appellant had fabricated his asylum claim (paragraph 50) and in so doing had presented documents that were not genuine (paragraph 46). In such circumstances without more by way of financial disclosure, I do not consider that any reasonable

decision-maker should accept that the Appellant makes genuine financial contributions to his partner and her child from his own funds based essentially only on his assertion to this effect and 'edited' bank statements.

(vii) For completeness I note that the level of financial contribution shown in the statements before the First-tier Tribunal was considerably less than that shown in the evidence sought to be adduced before the Upper Tribunal. Payments identifiable to Ms Bishop over a period of 11 months approximate to £2400 – i.e. something of the order of £50 per week on average - although it is unclear why such payments were being made even at a time prior to cohabitation. The First-tier Tribunal Judge appears to have accepted the fact that there was some financial contribution from the Appellant uncritically, but nonetheless determined – sustainably for the reasons I have already given – that there was no parental relationship with Ms Bishop's child. Indeed, it seems to me that in circumstances where the Appellant was by the date of the hearing before the First-tier Tribunal cohabiting with Ms Bishop small financial contributions, if indeed any were made genuinely originating from the Appellant, may be understandable in the context of sharing household expenses, and are not a reliable or significant indicator of parental responsibility in respect of her child.

27. Be that as it may, for the reasons already given, and in all the circumstances I do not identify any error of law in the approach of the First-tier Tribunal Judge.

NOTICE OF DECISION

28. The decision of the First-tier Tribunal contained no error of law and stands. The Appellant's appeal remains dismissed.

Signed: **Dated: 16 August 2017**

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Deputy Judge of the Upper Tribunal I. A. Lewis