Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/20188/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 September 2019	**On 27 September 2019**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

SULE [O]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms I Ramnundun, Solicitor of Rashid & Rashid Solicitors (Merton High Street)
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who was born on 7 January 1971, is a national of Nigeria. He entered this country pursuant to a visit visa issued in August 2006, which was valid until 9 February 2007 and thereafter overstayed without leave. He apparently remained outside the notice of the immigration authorities because the next they knew of him was when on 10 February 2017 he submitted an application for leave to remain under Article 8 on the basis of his family and private life which he had established while in this country unlawfully.

2. The application which he had made was refused by the respondent who also certified the claim as clearly unfounded under Section 94 of the Nationality, Immigration and Asylum Act 2002, the effect of which was that he would only be able to appeal against this decision after he had left this country.

3. The appellant served a pre-action protocol letter in respect of this decision, following which the respondent agreed to reconsider the decision to refuse and certify the application, which he did. The decision was remade on 19 September 2018 and although the decision to refuse the application was maintained, the respondent no longer maintained the decision to certify the claim as clearly unfounded, the consequence being that the appellant was able to appeal against the decision, which he did.

4. That appeal was heard before First-tier Tribunal Judge Hussain sitting at Hatton Cross on 23 April 2019 but in a Decision and Reasons promulgated on 15 May 2019 Judge Hussain dismissed the appeal.

5. The essence of the appellant's claim was that he was now in a relationship with a lady who had leave to remain in this country, that she had three children who were her stepchildren, and that they also had a young baby. In respect of the oldest child that child, who is now 11 years old, was then about 9 years old and having been born in this country fell within the definition of a "qualifying child" as set out within Section 117D(1)(b) of the Nationality, Immigration and Asylum Act 2002, being a person under the age of 18 who had lived in the United Kingdom for a continuous period of seven years. It was the appellant's case that he had a "genuine and subsisting parental relationship" with this child and that it would not be reasonable to expect the child to leave the United Kingdom, as he was now at an important stage of his education and his mother and siblings were established in this country. In these circumstances the appellant relied upon the provisions set out within Section 117B(6) of the 2002 Act which provides as follows:

> "**117B Article 8: public interest considerations applicable in all cases**
>
> …
>
> (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
>
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
>
> (b) it would not be reasonable to expect the child to leave the United Kingdom".

6. It was, accordingly, the appellant's case that because he had a genuine and subsisting parental relationship with children who were qualifying children because they had been in this country for more than seven years and it would not be reasonable to expect those children to leave the United Kingdom, as provided by statute, the public interest did not require his removal. In those circumstances, clearly because he had a

family and private life in this country and there was no public interest in removing him he ought to be allowed to remain.

7. The judge at the hearing accepted that if he could establish that he had such a relationship with his stepchildren, then the appeal should succeed, finding as follows at paragraph 22 of his decision:

> "22. I accept that if the appellant is able to prove that he has a genuine and subsisting relationship with his partner's qualifying children, then [the] public interest would not require his expulsion from this country.".

8. The claim nonetheless failed on the evidence, the judge finding as follows in the concluding sentence of paragraph 22:

> "However, having considered the totality of the evidence in this case, I am not satisfied that the appellant does have a genuine and subsisting relationship with them".

9. It is argued in the grounds that there was a material error in this decision because the judge failed to have proper regard to the evidence which had been before him.

10. At the hearing before me, Mr Walker, representing the respondent very fairly stated as follows:

> "The respondent concedes that the judge has made a material error in his assessment of the evidence which was before him concerning whether or not there was a genuine parental responsibility in respect of the children.
>
> He makes criticism of the letters from the school in saying he was only an emergency contact, whereas in fact the actual letters for the school (at pages 11 and 12 of the appellant's bundle) say that the appellant is an actual point of contact for collection and in case of emergency. So he is known at the school as someone who collects the children.
>
> Although the judge has said there is a lack of evidence that they share the same address, at page 18 of the bundle was a letter addressed to the appellant, at [~] Wickham Lane, from King's College NHS Hospital, at page 19 a letter addressed to the appellant from Sky Services and at page 21 another one from Morrisons, and correspondence is also addressed to the mother of the children at the same address.
>
> The omission of this evidence is a material error because the judge goes on to dismiss the appeal because of the lack of such evidence".

11. I agree, and this Tribunal is grateful to Mr Walker for the very fair and balanced approach he has adopted in respect of this appeal. Clearly, whether or not he was living as part of the same household is a relevant factor when considering whether he appellant indeed had a parental relationship with his stepchildren. If he was and had such a relationship, then the Tribunal would need to consider the effect of Section 117B(6) and its impact on the Article 8 assessment. Accordingly, this decision will now have to be remade.

12. For the reasons which follow I am able to remake the decision myself without hearing detailed further evidence save what is now stated. The appellant's partner has (and none of the facts set out below are disputed by the respondent) now been granted indefinite leave to remain. Furthermore, the oldest child (one of the appellant's stepchildren) is now 12 years old and is a British citizen, citizenship having been granted on 9 August 2019. Also, which is extremely relevant, the appellant's partner's youngest child, who is also the appellant's natural child, who is now 2 years old has also been registered as a British citizen, so if and to the extent that the appellant has a genuine and subsisting parental relationship with that child (which is not disputed on behalf of the respondent), one would have to consider the effect of Section 117B(6) in respect of this child as well. Apparently the two middle children have not yet applied for British citizenship, although it is intended that they will in the future, because as is well-known, the expense of doing so is high and the family will need to save more funds before these applications are made.

13. I also have now been shown a letter which has been sent signed by (or more realistically on behalf of) the four children which purports to say how good a father the appellant is. I have to say that on its own this letter is not very convincing because it is not clear who signed it or indeed who wrote it, and it would seem to be a letter which was written on their behalf solely in order to assist the case. However, even without this letter the Tribunal now has before it evidence not only that the appellant was living in the same household as the mother of his stepchildren, but also the knowledge that their natural child, that is the 2 year old, is a British citizen and it is not disputed that the appellant has a genuine and subsisting parental relationship with this child.

14. The respondent does not seek to suggest that it would be reasonable for this child or indeed any of the other children to leave this country now. Certainly it would not be reasonable to expect the relationship between the youngest child and her mother to be separated which would mean that it would only be reasonable to expect this child to leave this country if it would be reasonable for her siblings and mother to leave as well, which it would not because they are all at sensitive stages of their education and have had a British upbringing.

15. It is not suggested as I have said on behalf of the respondent that it would and furthermore again very responsibly Mr Walker, on behalf of the respondent, in light of this up-to-date evidence does not seek to persuade the Tribunal that this appeal should not now be allowed.

16. Accordingly, because the appellant as I find has a genuine and subsisting qualifying relationship both with his stepchildren who have been here over seven years and who are accordingly qualifying children for this purpose, and also with his natural 2 year old child, and it would not be reasonable to expect any of these children to leave the United Kingdom, it follows that the public interest does not require his removal.

17. As clearly he now has a family and private life in this country, his appeal must in these circumstances be allowed and I will so order.

Notice of Decision

I set aside the decision of First-tier Tribunal Judge Hussain as containing a material error of law and substitute the following decision:

The appellant's appeal is allowed, on human rights grounds, Article 8.

No anonymity direction is made.

Signed:

Upper Tribunal Judge Craig Dated: 20 September 2019