Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/03079/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 October 2017	**On 7 December 2017**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

OO
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Nnadi, Saviours Solicitors
For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria, born in 1982. A decision was made on 9 July 2015 to refuse leave to remain on human rights grounds, with reference to Article 8 of the ECHR. The basis of the application for leave to remain was mainly in terms of the appellant's relationship with his son, born on 3 January 2008.

2. The appellant appealed and his appeal came before First-tier Tribunal Judge O'Keefe ("the FtJ") at a hearing on 13 December 2016. The appeal was dismissed.

3. The grounds of appeal in relation to the FtJ's decision are to the effect that the FtJ failed to undertake a lawful assessment of the Immigration Rules in terms of paragraph EX.1., and the reasonableness of the appellant's son leaving the UK to go to Nigeria. The grounds also make a generalised complaint, with reference to authority, about the FtJ's assessment of the child's best interests.

Submissions

4. In submissions, Mr Nnadi relied on the grounds. It was submitted that the FtJ was wrong to conclude that it was reasonable to expect the appellant's son to leave the UK. The child had been in the UK for a period of seven years. Although it was initially said that he had not been in the UK for seven years preceding the application, it was then submitted, and agreed on behalf of the respondent, that he had.

5. Mr Nnadi referred to the appellant's son having sickle cell disease, and the fact that he attends hospital on a regular basis. He needed constant monitoring.

6. It was submitted that the respondent's 'rule 24' response did not adequately deal with the grounds.

7. In submissions, Ms Aboni relied on the rule 24 response. It was submitted that the FtJ had adequately considered the child's circumstances. She had concluded that the appellant did have a genuine and subsisting relationship with his son and that it was in the child's best interest to remain in the UK. However, she rightly concluded that the child's best interests were not determinative of the appeal.

8. She concluded that the appellant's evidence was not credible or consistent in terms of where he and his son were living. He had also downplayed his existing ties to Nigeria.

9. The FtJ was clearly aware of the medical issues involved, but was entitled to conclude that there was treatment available for the child's condition in Nigeria.

10. In reply, Mr Nnadi reiterated the fact that the appellant's son has sickle cell disease, and has been in the UK for seven years or more. If the appellant and his son were to be removed to Nigeria, the appellant would have to look for work whilst caring for his son.

11. In response to the suggestion that the grounds are nothing more than a disagreement with the FtJ's decision, it was submitted that the FtJ had not properly applied the law or considered that the best interests of a child should be "paramount".

Conclusions

12. I announced at the hearing that I was not satisfied that there was any error of law in the decision of the FtJ. The FtJ found that the appellant's

son was born in the UK on 3 January 2008 and had lived in the UK continuously since then. She accepted that although he was a Nigerian national, he had not visited Nigeria. She then referred to s.55 of the Borders, Citizenship and Immigration Act 2009 and the need to consider the child's best interests as a primary consideration.

13. She correctly identified that paragraph EX.1. was relevant, in particular that the issue was whether it would be reasonable to expect the child to leave the UK. She made a number of findings. She found that the appellant's son has no connections with Nigeria other than through his nationality and heritage. She referred to evidence in relation to his schooling, and the stage at which his education had reached.

14. She accepted that he suffered from sickle cell anaemia, takes regular medication and is under the supervision of paediatric experts. She found that the medical evidence provided demonstrated that it is often the appellant who takes his son for medical appointments. She concluded that the appellant had demonstrated that he has a genuine and subsisting relationship with his son.

15. At [37] she very properly said that she needed to assess the child's best interests without considering the immigration history of his parents.

16. She found that this was not a case where the child was at a crucial or transitional stage of his education, explaining her reasons for coming to that view but she noted that he was making good progress at school. In relation to his health, she concluded that the evidence was that there was treatment available in Nigeria, although it was likely to be more expensive than in the UK. Taking into account the length of time that he has been in the UK, and his health for which he is receiving treatment, she concluded that it was in his best interests to remain in the UK. However, she concluded that what the child's best interests were not determinative of the appeal. The FtJ was entirely correct in that regard, whereas the submission put to me to the effect that the child's best interests should be "paramount", was incorrect.

17. At [39] the FtJ concluded that the appellant's evidence was "characterised by a lack of candour about his personal circumstances". She referred to evidence in relation to what schools he attended, with there apparently having been inconsistency as to what school he was at. The FtJ rejected the appellant's evidence that the appellant had changed schools for a temporary period, namely two weeks while he attended a tournament. The other evidence was plainly inconsistent with the appellant's in that respect. The FtJ said at [41] that the appellant's explanation that his son had been at that particular school for a tournament or some sort of exchange was "simply fanciful".

18. At [43] she said that the appellant's evidence as to his current circumstances was inconsistent in terms of the evidence that he and his son were living with the appellant's parents. She gave full reasons for coming to that view.

19. She also referred to an entry clearance application made by the appellant as a student in March 2005, and the determination of his appeal against the refusal of entry clearance. The information before the Immigration Judge at that appeal in 2006 was to the effect that the appellant's family was and remained in Nigeria.

20. At [46] the FtJ concluded that she had not been presented with a full and accurate picture of the appellant's current circumstances or those of his son. She found that the appellant had not demonstrated that he and his son are currently living with the appellant's parents, and the appellant had downplayed his existing ties in Nigeria.

21. She referred to the decisions in *EV Philippines v Secretary of State for the Home Department* [2014] EWCA Civ 874, and *MA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 705, whereby in the latter case the Court of Appeal considered the test of 'reasonableness' with reference to s.117B(6) of the Nationality, Immigration and Asylum Act 2002 and paragraph 276ADE(1)(iv).

22. The FtJ reiterated that the appellant's son was not at a crucial stage of his education, nor was he approaching any critical milestones in his personal life. Treatment would be available for his sickle cell anaemia in Nigeria, and although the treatment may not be of the same standard as that in the UK, she said that there was no evidence before her to support an assertion that his condition would deteriorate if he moved to Nigeria.

23. She then referred to the public interest issue. She noted that the appellant had only ever had limited leave to remain in the UK as a student, and that leave expired on 19 July 2007. Although the appellant had made further applications, none was granted. Yet again she reiterated that the appellant had downplayed his family ties in Nigeria.

24. Given that his parents said that they had supported the appellant and his son in the UK, she found that there was no reason why they could not continue that support in Nigeria. She noted that the appellant had lived in Nigeria until 2006 and would be familiar with life there. There would be some disruption to his son's life, but she concluded that the appellant had not demonstrated that it would not be reasonable to expect his son to leave the UK with the appellant.

25. She further concluded that there were no exceptional or compelling circumstances meriting consideration outside the confines of the Article 8 Rules. In this, she referred to the decision of the Court of Appeal in *Agyarko and Others* [2015] EWCA Civ 440, in which it was said that the gap between paragraph EX.1. and the requirements of Article 8 was likely to be small. The FtJ's conclusion in this respect is unaffected by the decision of the Supreme Court in *Agyarko* [2017] UKSC 11.

26. Finally, she concluded that the appellant had not demonstrated that there would be very significant obstacles to his integration in Nigeria.

27. I cannot see in the FtJ's decision any failure to consider a relevant issue. She was fully aware of the relevant legal framework, and applicable authorities. She made a comprehensive assessment of the child's best interests. She properly concluded that the child's best interests were not determinative of the appeal. She took into account, as she was bound to do, the public interest issue in assessing the reasonableness of the appellant's son going to Nigeria with the appellant.

28. Both the grounds of appeal and submissions before me amount to nothing more than a disagreement with the FtJ's assessment of the issue of reasonableness. However, neither the grounds nor the submissions identify any error of law in the FtJ's decision. The FtJ's decision is comprehensive and entirely legally sustainable.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal therefore stands.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Upper Tribunal Judge Kopieczek 6/12/17