Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/07442/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 November 2019	**On 26 November 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS
HER HONOUR JUDGE STACEY
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)

Between

ATHANASIUS CHINENYE NWOGU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Dingley, Counsel instructed by Direct Public Access
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Nigeria against a decision of the First-tier Tribunal dismissing his appeal against a decision of the respondent refusing him leave to remain on human rights grounds.

2. We begin by looking carefully at the decision of the First-tier Tribunal. This shows that the appellant was born in July 1976. He is therefore now 43 years old. He entered the United Kingdom in September 2004 with entry clearance as a student. His leave as a student was extended until 31 August 2007. On 29 August 2007 he applied for further leave to remain but the application was invalid. He made a further application on 22 April 2018 which was refused with no right of appeal on 28 January 2010. On 9 February 2010 he was served notice confirming that he is an overstayer. On 4 May 2013 he applied for leave to remain on family life grounds.

The application was successful when he was given leave until 12 December 2015. That leave was then extended until 8 October 2018. On 24 September 2018 he made the application leading to the decision complained of. His application was to remain on the basis of his private and family life with his current partner. The application was refused on 4 April 2019.

3. A fundamental problem with his application is that the appellant did not satisfy the requirements of any relevant Immigration Rules.

4. He was not married to his current partner and although they may well have a close and intimate relationship it had not lasted for two years. The relationship began in April 2018. It follows that the appellant's partner was not a "partner" for the purposes of the Immigration Rules or Part 5A of the Nationality, Immigration and Asylum Act 2002.

5. The respondent did not accept that there were "very significant obstacles" to the appellant's reintegration into Nigeria. Although he had not lived there since 2004 he had lived there for the first 28 years of his life and the respondent expected him to have retained knowledge of life in Nigeria. The respondent was alert to the possibility of there being exceptional circumstances but found none. His marriage to his former spouse was the main reason for the appellant being given leave to remain on an earlier occasion but they divorced on 19 May 2017.

6. The appellant said that he supported his former stepdaughter financially.

7. He commenced a relationship with his current partner who identifies simply as "N-AB" in April 2018. The respondent was satisfied that the appellant could continue to support his stepdaughter from Nigeria or wherever he chose to live. He had no proper basis for assuming that a relationship with his present partner, which was of short duration and formed when he had no relevant leave, would lead to his being entitled to remain on human rights grounds.

8. Paragraph 6 of the judge's Decision and Reasons is particularly important. There he said:

> "In oral evidence the appellant was asked to describe the level of his relationship with his former stepdaughter T... . He said that he has indirect telephone contact with her. When asked to explain what this means, he said that he passes messages to the appellant through her aunts. Recently, he saw her at the train station. On a monthly basis, he provides £100 to her as well as some extra funds. She is 14-years-old. Her mother only allows her to be contacted whenever she wishes. In the last two/three months, she has not allowed him to see her".

9. The judge went on to note the evidence that T regards the appellant as her father and calls him "daddy". She did make indirect contact through her aunts and they met on occasions.

10. The appellant explained that he and his current partner wanted to have a baby together. They were currently trying for a baby and undergoing medical treatment. He said it would delay the process to return to Nigeria and make an application for a visa.

11. Additionally he contributed to the community. For example, he worked with vulnerable people on suicide watch.

12. He would not be able to obtain employment outside the United Kingdom that was similar to his present work.

13. He then explained that his partner had lived in the United Kingdom since she was a baby. Her parents were aged and she gave them care.

14. The First-tier Tribunal was satisfied that the respondent's decision was in accordance with the Rules. The judge described the decision as "unassailable".

15. The judge looked for exceptional circumstances that might support a conclusion that the appellant had established a human right to remain in the United Kingdom. He noted with approval that the appellant made some provision for the daughter of his former wife but found that he was not playing an active role in the upbringing of the child. The judge also gave weight to letters of recommendation drawing attention to the appellant's character and contributions he made to the community. The judge said at paragraph 19 that the appellant worked in jobs giving support to children and adults with disabilities. The judge said:

> "The complexity of his work firstly, requires multi-agency involvement. This might to be safeguard a young person who is at risk of sexual exploitation or involvement in drugs and gang crimes. He has worked with specialist police teams, Probations Service and other health professionals to ensure services users are effectively supported. As I have already indicated, the work he does is of tremendous benefit to the community and needs to be commended".

16. The judge went on to say that he had found nothing to show that "family life" between the appellant and his partner could not continue in Nigeria although the appellant and his partner no doubt preferred to live in the United Kingdom.

17. The judge directed his mind to Section 117B of the Nationality, Immigration and Asylum Act 2002 and found that the appellant is a fluent English speaker. However the judge found that evidence that the appellant and his partner were independent financially was not satisfactory.

18. Further the judge could not see why, even if the appellant could expect to succeed in an out of country application for entry to the United Kingdom, it would be unduly harsh for him to return to Nigeria and make an application in accordance with the rules. The judge concluded that "exclusion" (he meant return to Nigeria) would not result in unjustifiably harsh consequences and dismissed the appeal.

19. The grounds of appeal are settled by Mr Dingley and are extensive. We have considered them with the skeleton argument and oral submissions.

20. Mr Dingley's first complaint is the First-tier Tribunal Judge erred by failing to consider the best interests of the British child. This is clearly a reference to the child of his former partner and wife. The ground is made out in the sense that there is no express consideration of that child's best interests although it is equally plain from reading the decision that the judge had regard to the interests of that child. The evidence before the Frist-tier Tribunal did not support a conclusion that the appellant was in a parental relationship with the child. Rather the evidence showed that there was occasional contact between the appellant and the child at her mother's discretion. There is no indication of any guiding role by the appellant and although he paid some money for the child's maintenance, the sums are modest. They do not

live in a nuclear family. There is no evidence of exceptional dependency or need. She is 14 years old and she attends a boarding school. We do not see how the most rigorous consideration of the evidence could have led to a finding that the relationship was weighty for the purposes of Article 8 of the European Convention on Human Rights.

21. The grounds of appeal refer to authority that underlines the desirability of considering the best interests of the child and it is certainly right that it is a *potentially* very important consideration but the grounds point to nothing in the evidence which indicated that the appellant's relationship with his former partner's daughter is a relationship that should have been given great weight.

22. The grounds then complain under "ground 2" that the First-tier Tribunal Judge failed to consider properly paragraph 276ADE(1)(iv) of HC 395 and the appellant's circumstances. This Rule sets out matters to be considered in the case of a person who has not managed to accumulate twenty years' continuous residence but for whom there would be "very significant obstacles" to his integration into the country to which he would be required to go. Again, the evidence does not support the appellant's contention that such obstacles exist. The appellant is a mature man who had adult life experience of living in Nigeria. He has a work ethic and is apparently fit. It may well be that he has no-one to support him in Nigeria. We can see nothing, and the grounds certainly point to nothing, which would support the contention that very significant obstacles exist here.

23. Ground 3 refers to the case of **Chikwamba**. This is clearly a reference to the decision of the House of Lords in **Chikwamba v SSHD [2008] UKHL 40**. Somewhat surprisingly, the grounds refer to the decision of this Tribunal in **R (on the application of Chen) v SSHD (Appendix FM – *Chikwamba* – temporary separation – proportionality) IJR [2015] UKUT 189 (IAC)**. We do not follow the argument here. **Chikwamba** was a decision about the futility of a person having to leave the United Kingdom and in so doing separate, at least for a while, a nuclear family and make provisions for a small baby in order to travel to Zimbabwe, which at that time was in a particularly difficult state, in order to make an application which was bound to succeed. Put like that it is, with respect, unremarkable that the House of Lords was not impressed with the Secretary of State's insistence on policy for its own sake. The point is developed in **R (Agyarko v Ikuga) v Secretary of State for the Home Department [2017] UKSC 11**. Those cases all considered partners of UK nationals. As has been explained above, the appellant does not have a "partner" here within the meaning of the Rules. He cannot hope to satisfy the requirements of the Rules. He is not asking to be excused the obligation to return to make a successful application. He has been asking to have it accepted that he has established a right to remain here even though he has no right under the Rules. Sometimes people do establish such a right because such is the nature of human rights applications. We cannot see how it can be argued effectively that this is such a case.

24. It is suggested in the grounds that there is a particular need for the appellant to remain in the United Kingdom. He wishes to start a family and he and his partner have been discussing fertility treatment. There is clear evidence that they have been discussing it. There is medical evidence of initial testing. There is nothing before us,

or the First-tier Tribunal, to show that there is any significant progress in participating in that kind of treatment.

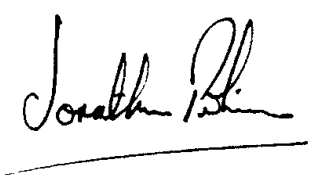
25. We have not been told if the proposed treatment raises any ethical considerations given that the people involved are not married and have not been together for long enough to be in a committed relationship for immigration purposes to start a family. Neither is there any indication of whether such treatment could be available in Nigeria or if the appellant actually needs to be present or whether his contribution to the process could be frozen. We are not ruling on these things. We do not know. There is no evidence and that is the problem.

26. There was evidence before the First-tier Tribunal of some involvement in community activities, some of them church based. This is not nearly enough to establish a human right to remain.

27. The fact is the appellant was in the United Kingdom on a particular basis. He was actually an overstayer for a while but that was excused when he was allowed to remain on the basis of a marriage and given leave to remain until a date in the autumn of 2018. The marriage fell apart. Marriages do and that is a very often sad event. It was probably a sad event here. However, his leave to remain was no longer necessary. He applied to extend it on the basis of a new relationship but, for the reasons given, the Secretary of State did not regard them as sufficiently weighty to give him the right to remain outside the Rules and he had no right inside the Rules. Mr Dingley has set out to find material fault. We agree with him that it would have been better if there had been clear findings about the rights of the child. His contention that the First-tier Tribunal Judge failed to carry out a balancing exercise is not made out. The points can be expressed differently but the judge clearly had in mind the imperative of enforcing immigration control and the particular points in the appellant's case. There is no obligation to carry out a balancing exercise in any particular way, if at all. It is good practice to prepare a "balance sheet" because it shows the relevant points have been considered. Failure to prepare a balance sheet is not an error of law and certainly not necessarily a material error of law. We can see nothing that has not been considered that ought to have been considered and possibly found weighty. The decision is adequate. It is a brisk consideration of what is essentially a weak case.

Notice of Decision

28. We find no material error and we dismiss the appeal against the First-tier Tribunal Judge's decision.



Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 25 November 2019