Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/07781/2019**

THE IMMIGRATION ACTS

Heard at Manchester CJC **Decision & Reasons Promulgated**
On 17 December 2019 **On 23 December 2019**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

TEDROY JONES
[ANONYMITY DIRECTION NOT MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms G Patel, instructed by AJA Solicitors
For the respondent: Mr M Diwnycz , Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Foudy promulgated 1.8.19, dismissing his appeal against the decision of the Secretary of State, dated 15.4.19 to refuse his application made on 14.3.18 for leave to remain in the UK on the basis of private and family life pursuant to article 8 ECHR.

2. First-tier Tribunal Judge Simpson granted permission to appeal on 21.10.19.

Error of Law

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3. For the reasons summarised below, I found no material error of law in the making of the decision of the First-tier Tribunal so that the decision must stand as made.

The Relevant Background

4. The relevant background can be summarised as follows. The appellant came to the UK as a visitor in October 2001. He obtained further leave to remain as a student and entered into a relationship with a British citizen. Their British citizen son was born on 1.12.08 and the appellant married the mother in October 2009. He was given discretionary leave, subsequently extended to 8.4.18. The application to which this appeal relates was made within extant leave on 14.3.18. In all, the appellant had been in the UK some 18 years by the date of the appeal hearing before the First-tier Tribunal.

5. However, the appellant and his wife separated in 2016; their child remaining with his mother. The First-tier Tribunal found that there was no realistic prospect of a reconciliation between the appellant and his wife, and that he had had no contact with his son since late November 2017. His wife has prevented him from contacting the son. However, the appellant is not divorced and has taken no legal proceedings either to terminate the marriage or to obtain contact with or access to his son, having adopted a 'wait and see' approach. He lives in hope of an eventual reconciliation with both wife and son.

6. Judge Foudy found that the appellant did not meet the requirements of the Immigration Rules for leave to remain in relation to either private or family life and that the claim outside the Rules pursuant to article 8 ECHR also failed. In the circumstances, the appeal was dismissed.

The Grounds

7. In summary, the grounds assert that the judge failed to make the requisite Section 55 of the Borders, Citizenship and Immigration Act 2009 'best interests' assessment in relation to the appellant's child. It is also argued that the judge gave insufficient weight to (a) the appellant's Rastafarian faith which lay behind his reluctance to aggravate his wife by pursuing legal proceedings for contact with his son; (b) the ties he had established with his son up to the age of 9; the prospect of resumption of contact with his son at some time in the future when he attains greater personal autonomy; and (c) the appellant's good immigration history.

8. In granting permission, after reciting the grounds, Judge Simpson stated little more than that the grounds were arguable and disclosed an overall inadequacy of reasoning.

Assessment of the Grounds & Submissions

9. For obvious reasons, the appellant could not meet the requirements of Appendix FM in relation to family life with either a partner or child. In relation to private life under paragraph 276ADE, the judge found that there were no very significant obstacles to his integration in Jamaica, the country of his birth, nationality, and ethnic background, where he will be able practice his Rastafarian faith, and where there will be no language difficulties. Further, there is no genuine and subsisting relationship with a qualifying child for the purposes of either paragraph 276ADE or s117B(1)(vi). The judge also found no exceptional circumstances justifying leave to remain under the GEN section of Appendix FM.

10. Given the above facts, including the absence of contact between the appellant and his son for over two years, the judge was entitled to conclude that there is no genuine and subsisting relationship with either a partner or his child sufficient to found a claim either within or without the Rules on family life article 8 ECHR grounds. Article 8 is not engaged in relation to family life.

11. The best interests of the child under Section 55 of the Borders, Citizenship and Immigration Act 2009 are, obviously, to remain in the UK with his mother. In an ideal world, they would also be to have the regular input of both parents in his upbringing. However, in the absence of any such input for over two years, the child's best interests do not require the appellant to remain in the UK to await some date in the remote future when the child might, or might not, choose for himself to instigate contact with his father. As stated, the appellant has chosen to take no legal action to seek the assistance of the courts for contact with his son. Neither does he provide any financial support for his wife or child.

12. In summary, the fact of the matter is that the appellant has no physical or emotional input at all in the life of his son. At [11] of the decision, Judge Foudy was entitled to find that the appellant's relationship with the child is so "tenuous and sporadic" that the child's daily life will be "completely unaffected by his father's departure from the UK, as will his financial and emotional security as the appellant contributes to neither of those." In her submissions to me, Ms Patel suggested that the judge had made no mention of the 'Parental Responsibility Agreement' signed in 2011. However, even though he had a formal agreement as to his parental responsibility, he failed to take any action to enforce it. There was no error in not mentioning this document as it does not assist the appellant and, if anything, it weakens his case by showing he failed to exercise a right to involvement in the parenting of the child. Similarly, the GP letter at [E86] of the respondent's bundle, stating that the doctor has "seen evidence' that the appellant has joint custody with the mother takes the appellant's case no further in the light of the absence of any contact with the child for over two years. Ms Patel also relied on the school report at [D82] of the respondent's bundle, but there is nothing in this document that indicates that it was sent to the appellant, as there is no reference to him in the document. Even if it was sent to him, the document fails to demonstrate that the father has had any active involvement in the child's education or schooling.

13. Whilst the appellant may well have had past or previous involvement in his child's life, the fact of the matter is that he no longer does so, apparently through choice. The fact that he claims that this is consistent with his Rastafarian faith does not in any way strength his claim to family life.

14. I can find no error in the judge's conclusion that there are no very significant obstacles to the appellant's integration in Jamaica. The findings were entirely open to the judge on the evidence and adequate reasoning has been provided. He may experience some difficulties or challenges after so long an absence, but given his background and faith, as well as the other matters referenced in the decision or mentioned above, there is every reason to conclude that he will be able to re-integrate himself into society in Jamaica without there being very significant obstacles.

15. In relation to private life outside the Rules under article 8 ECHR, the judge took into account the appellant's long residence. However, pursuant to s117B of the 2002 Act, immigration control is in the public interest and little weight was to be given in the proportionality balancing exercise to his private life developed in the UK whilst he has been here with precarious immigration status. Contrary to the assertions in the grounds, when applying s117B no credit accrues to the appellant in the proportionality balancing exercise for the fact that he speaks English or that he is financially independent. Neither is he entitled to any credit for his good immigration history; doing no more than is expected of a law-abiding resident of the UK does not diminish the weight of the public interest in his removal. The argument that the judge failed to conduct an article 8 ECHR balancing exercise is plainly of no assistance on the facts of this case where there was no family life sufficient to engage article 8 ECHR.

16. Although she was not required to do so, the judge considered the reasonableness test under s117B(6) in relation to the appellant, which is the same test that would apply under paragraph 276ADE(1)(vi) to a child. She accepted that it would not be reasonable to expect the child to leave the UK but as there is no genuine and subsisting relationship between the appellant and the child, these considerations cannot assist him.

17. Outside the Rules, the judge found that there were no compelling circumstances to justify, exceptionally, granting leave to remain on the basis that otherwise the decision would be unduly or unjustifiably harsh. It is difficult to see what compelling or exceptional circumstances there could be in this case. The grounds claiming that the judge has applied the wrong test are entirely misguided.

18. Finally, the grounds raise a complaint that the First-tier Tribunal failed to consider that the appellant's application for settlement fell under the respondent's discretionary leave policy, so that after completing 6 years' discretionary leave he would be entitled to Indefinite Leave to Remain. However, it appears that no such argument was presented to the First-tier Tribunal and does not appear in the grounds of appeal to the First-tier Tribunal. Although she raised this matter, Ms Patel did not provide the

policy on which she based her argument. There can be no error of law in the judge failing to address an issue that was never raised.

19. In reality, considering the case and evidence as a whole, the appellant's appeal was doomed to failure from the outset; there was and remains no basis to support a finding that the decision of the respondent was anything other than proportionate to his right to respect for private and family life under article 8 ECHR. I can find no error of law in the decision of the First-tier Tribunal.

Decision

20. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.

I make no order for costs.

Signed

Upper Tribunal Judge Pickup

Dated 17 December 2019