Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13649/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 September 2019	**On 26 September 2019**

Before

Upper Tribunal Judge Sheridan

Between

VICTOR [O]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ngwudcha, instructed by Carl Martin solicitors
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 1 May 1962 who has been in the UK since May 2004. His leave to remain expired in 2006.

2. Whilst in the UK the appellant committed several offences, the most significant of which was battery for which he was sentenced to 10 weeks imprisonment in 2014.

3. The appellant has four children: [A], born on 26 October 1999; [V], born on 19 February 2001; [B], born on 28 March 2011; and [O], born on 20 March 2007.

4. On 5 November 2016 the appellant applied for leave to remain on the basis of his family and private life. His application was rejected. The respondent did not accept that he had a genuine and subsisting relationship with his children. It was noted that the children are in the care of their mother and that by court order he was prevented from parental access/contact with [B] and [O]. It was also noted that there was no evidence of contact with [V] and only a few documents to show a relationship with [A].

5. The appellant appealed to the First-tier Tribunal where his appeal was heard by Judge of the First-tier Tribunal Lucas. In a decision promulgated on 24 May 2019, the judge dismissed the appeal. The appellant is now appealing against that decision.

6. The judge found that there was insufficient evidence before him to accept that the appellant plays a role in the life of, or has an ongoing or active relationship with, his children. The judge also found that the appellant has no other basis to be in the UK, as an overstayer with criminal convictions.

7. The grounds of appeal argue that the judge failed to consider whether the appellant has a genuine and subsisting parental relationship with his children for the purposes of section 117B(6) of the Nationality Immigration and Asylum Act 2002 ("the 2002 Act"). It is also argued that the judge had regard to parental misconduct contrary to *KO (Nigeria) & Ors v Secretary of State for the Home Department* [2018] UKSC 53.

8. Mr Ngwudcha argued that the decision is flawed because of a failure to make precise findings about the appellant's parental relationship with his children, who are qualifying children. He argued that the judge accepted the appellant is the father of the children and that he lived with them until July 2016 and he submitted that there was evidence before the judge showing a relationship with the children.

9. Ms Everett argued that the judge gave cogent reasons for not accepting that the evidence before him established that there was a genuine and subsisting parental relationship. She also observed that [A] was over 18 at the time of the hearing and therefore not a qualifying child.

10. Section 117B(6) of the 2002 Act provides that:

> *"(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."

11. A "qualifying child" is defined as a person under the age of 18 who is a British citizen, or has lived in the United Kingdom for a continuous period of seven years or more.

12. In order to bring himself within the ambit of section 117B(6) the appellant needed to show that he had a "genuine and subsisting parental relationship" with a qualifying child.

13. [A] was not a qualifying child at the time of the First-tier Tribunal hearing as she was over 18. Mr Ngwudcha argued that [A] was under 18 when the application was made. This, however, is irrelevant. The judge was required to assess the position at the date of the hearing; and at that date [A] was not a qualifying child due to her age. The appellant's other three children were qualifying children.

14. The Court of Appeal confirmed in *Secretary of State for the Home Department v AB (Jamaica) & Anor* [2019] EWCA Civ 661 that the assessment of whether there is a parental relationship is highly fact sensitive, and will involve consideration of the actual role – as a parent – played in the child's life. A parent can have a genuine and subsisting parental relationship even when they do not provide any direct parental care and have only limited contact. Indeed, as observed by Lady Justice King in *AB*, a parent could have a genuine and subsisting parental relationship even absent direct contact.

15. Although the judge did not refer to section 117B(6) or make a specific finding as to whether the appellant had a "genuine and subsisting parental relationship," he did consider the evidence before him that was relevant to the relationship between the appellant and his children and he found at paragraph 26 that there was little reliable evidence to show "any significant ongoing or active relationship".

16. Mr Ngwudcha argued that the judge's findings – and the evidence – does not support the conclusion that there is not a genuine and subsisting relationship. I disagree. As submitted by Ms Everett, there was very little evidence before the judge. The evidence concerning [B] and [O] indicated that contact was prohibited. The only evidence regarding [V] was a short letter supporting his application for leave dated 27 June 2015. Mr Ngwudcha drew my attention to correspondence from the appellant's church stating that the appellant is happily married and a great father to his four children but this letter was written in June 2015. Given the paucity of evidence to establish that the appellant had a genuine and subsisting relationship with any of his three qualifying children, the judge was entitled to find that section 117B(6) was not applicable.

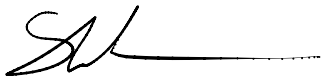
17. Mr Ngwudcha argued that, following *KO,* parental conduct cannot be taken into consideration when assessing the reasonableness of expecting a qualifying child to leave the UK. This is correct, but it is also irrelevant. In the absence of a genuine and subsisting parental relationship there was no need to consider the reasonableness of expecting a child to leave the UK as section 117B(6) of the 2002 Act could not apply.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law and stands.

No anonymity direction is made.

Signed



Upper Tribunal Judge Sheridan Dated: 26 September 2019