Upper Tribunal
(Immigration and Asylum Chamber) PA/02002/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 7 November 2019

Decision & Reasons Promulgated
On 13 November 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ANGE [S]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr T Haddow, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This determination follows on from:
   (i) The respondent's decision, dated 3 February 2017.
   (ii) The appellant's grounds of appeal to the First-tier Tribunal.
   (iii) The decision of FtT Judge Doyle, promulgated on 25 August 2017.
   (iv) The appellant's grounds of appeal to the UT.
   (v) The grant of permission by the UT, dated 2 July 2018, finding an arguable issue over whether the appellant's child is an EEA national, and the extent to which the appellant was entitled to the assistance of the respondent in establishing that; and over whether the article 3 disposal was adequate.
   (vi) The UT's directions and reasons, dated 12 July 2019.

(vii) Further directions, dated 4 and issued on 7 October 2019.

(viii) Appellant's response to directions, dated 11 October 2019.

(ix) Respondent's response, dated 28 October 2019.

(x) Appellant's skeleton argument, dated 4 November 2019.

2. Mr Haddow also tendered a well prepared and useful bundle, including most of the above. His skeleton argument reformulates the two grounds, the first being:

> Procedural fairness: whether the FtT erred by declining to exercise its power to direct the respondent to produce evidence about the father of the appellant's child, relating to his nationality and immigration status in the UK, with the result that "a central issue was decided on the basis of her inability to adduce evidence which only the respondent could obtain". At 54.1, the UT is asked to find "that the FtT unfairly failed to insist that the respondent complied with its duties to thoroughly investigate the appellant's claims [and] unfairly denied the appellant the opportunity to obtain evidence … reasonably likely … to be in possession of the respondent".

3. The appellant's application to the FtT for directions, dated 21 July 2017, is item 1 of her bundle. The request was for directions to the respondent "to verify the immigration status" of Mr [E] on 27 April 2015, the date of birth of the appellant's child. It was said that the issue was important as if Mr [E] had been settled in the UK, the child would be a British citizen; the respondent had been provided with sufficient information to do so "either through the address provided or by way of corresponding with HMRC"; and that due to issues of Data Protection [unspecified], the appellant could not obtain the required details without the assistance of the respondent.

4. The letter does not say, and it has not been suggested since, that the appellant approached the respondent directly for assistance, without the intervention of the tribunal.

5. The FtT's response on 26 July 2017, item 2 of the bundle, was to refuse the application, stating, "This appeal has been ongoing since February 2017 there has been adequate time to prepare the case".

6. As Mr Haddow pointed out, that does not relate well to the reasons advanced for the application. It is more akin to a reason for refusing an adjournment.

7. The decision of Judge Doyle does not deal with the matter of directions.

8. The first ground of appeal is essentially directed against the response of 26 July 2017 rather than against anything in the decision of Judge Doyle.

9. The criticism of Judge Doyle is that he should have issued directions (and so should have adjourned) rather than proceeding to decide the case. It is

not said that he failed to deal with a renewed application at the hearing for directions.

10. The materials referred to above disclose much information which was not before the FtT. No doubt in recognition of the fact that error generally needs to be shown on the state of affairs before the FtT, Mr Haddow submitted that by making directions which led to further information coming to light, the UT had engaged with the facts in such a way that it should resolve various issues on all evidence now available.

11. I am not persuaded that the UT should depart from the general rule. It is possible for inadvertent procedural unfairness to emerge from matters not known to the original tribunal, but this is not such a case. The further information which has emerged could have been ascertained by the appellant at an earlier stage. Responsibility for deficiencies in her case lies with her rather than with the respondent or the tribunal. Neither the respondent (nor, subsequently, the tribunal) may be expected to assist until approached on the basis that other reasonable enquiries have been exhausted.

12. The UT was able to discover relevant information by a simple google search, which was promptly communicated to the parties. The ease of doing so shows that at the time of the hearing in the FtT, the appellant had not reached the stage when other parties ought to have been compelled to make her case, rather than doing so herself.

13. Enquiries made in terms of the UT's directions of the German authorities and of Mr [E] were unproductive. Mr Haddow argued that the negative outcome justified the appellant's position at the time of the hearing in the FtT, but I am not persuaded. It was firstly for the appellant to show that she had done what she could.

14. In course of the appeal to the UT, the appellant asked for directions to be issued to various government departments which are not party to the proceedings. Given other reasons for dismissing the appeal, there is no need to explore that matter further, but such requests may give rise to other issues.

15. The appellant does not show that there was anything before Judge Doyle by which it was unfair to proceed to decide the case on available evidence, rather than adjourning and issuing directions to the respondent. The appellant was in no position to show that she had exhausted reasonable enquiries, or that she had asked the respondent for reasonable assistance and been refused. No duty had passed to the respondent "to thoroughly investigate the appellant's claims".

16. The material now available potentially raises several issues, but these proceedings are not apt for decision of the extent to which the appellant's case might be advanced on all evidence now available.

17. The second ground is formulated in the skeleton argument as:

> Reasoning in relation to finding no breach of article 3 ECHR: in concluding that the appellant could re-establish herself without the support of her family in Cameroon "as an independent educated woman", failure to take account of issues independent of the risk from her father; absence of discussion of the critical question whether she would be "able to find suitable accommodation and employment to avoid destitution"; no specification of the "weight of reliable evidence" to justify the conclusion; no reference to evidence before the FtT, a Refugee Board of Canada report, which "could not rationally support the FtT's conclusions".

18. The FtT's decision at paragraph 14 (i) – (l) clearly explains why even if the appellant had a violent and domineering father, she had embellished her claim about any influence he had as a chief or in wider society. The Refugee Board of Canada material is not entirely negative about the possibility for women to live alone in the larger cities of Cameroon, saying within section 4, "Two sources state that it is possible … as long as they have the necessary resources; the same sources added that the level of education influences the quality of the employment". The appellant is a university graduate. It is hardly surprising that enhances her employment prospects. The FtT's characterisation of her as "an independent educated woman" is correct. The comparison to be made was not with the most disadvantaged women to be found in Cameroon. There was no reason to think that she would be at disadvantage compared to other single mothers in that country (and she would have the advantage of relocation assistance offered by the respondent).

19. Even if paragraph 14 (m) is somewhat compressed, I find that the decision reaches a legally adequate resolution of the article 3 claim and of internal relocation, involving no error on a point of law. The evidence did not realistically lead to any other conclusion for an individual such as the appellant.

20. Proceedings have been protracted, partly at the instigation of the UT. Despite the outcome, that may not be a fruitless exercise. The appellant was not entitled to expect the respondent or the FtT to research matters related to her daughter's paternity at the time of the FtT hearing, but she should now be able to clarify the merits of any claim on that basis.

21. Neither ground of appeal is made out. The decision of the FtT stands.

22. No anonymity direction has been requested or made.

Hugh Macleman

9 November 2019
UT Judge Macleman