



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07273/2018

THE IMMIGRATION ACTS

Heard at Bradford
On 14 November 2019

Decision & Reasons Promulgated
On 21 November 2019

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

AB

ANNONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: None

For the respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original first Appellant in this determination identified as AB.

1. In this decision I remake the decision in response to the appellant's appeal against the respondent's decision dated 25 May 2018, to refuse his asylum and human rights claims. The appellant is a citizen of Algeria.
2. In my 'error of law' decision dated 8 June 2019, I made it clear that there was no error of law in relation to the asylum / Article 3 ECHR findings made by

the First-tier Tribunal ('FTT'). In a decision dated 5 September 2019 adjourning the resumed hearing of that date, I confirmed that it was made clear on behalf of the appellant that he longer pursued his asylum claim.

3. As such, this decision solely deals with the appellant's claim that removing him to Algeria would breach Article 8, ECHR because of the family life he has developed with his British citizen partner ('A') and her children with a former partner. A has seven children but the appellant claims that he has family life for the purposes of Article 8 with two of these. D was born in May 1999, and is therefore 20. She has cerebral palsy. At the last hearing I agreed that she should be treated as a vulnerable witness but indicated that the medical evidence was out of date and scant and it would be helpful to have more up to date evidence on this. This has not been provided. S was born in April 2002, and is therefore 17. There is evidence that he completed GCSEs in June 2019 but no clear evidence to explain his current circumstances.

Preliminary issues / Hearing

4. The appellant did not attend the hearing and has provided no explanation for this. I am satisfied that the appellant was notified and aware of the hearing date. After the promulgation of my 'error of law' decision, a notice of resumed hearing listed for 5 September 2019 was sent to the appellant at his home address (Smiddles Lane) and his then representatives, Salam & Co, in a notice dated 6 August 2019.
5. That hearing was adjourned by me with specific directions for the appellant to file and serve a consolidated bundle before 3 October 2019. For convenience, I set out the parties agreement on the relevant issues and directions I gave below.

"3. The parties were also able to agree the following matters:

- (i) The appellant no longer relies upon his asylum claim and pursues his appeal on Article 8 grounds only.
- (ii) The FTT's factual findings on Article 8 are only preserved in so far as they are not infected by the findings regarding S and her brother SO's ability to turn for support from their biological father - see the findings at [13], [17] and [20] of the FTT's decision. Ms Hashmi accepted that these findings should form the starting point, but that she would be inviting the Upper Tribunal ('UT') to reassess the finding that the appellant and sponsor concocted an asylum claim in the light of all the evidence, viewed holistically.
- (iii) As to this issue the consolidated bundle submitted entirely fails to address the evidence set out in my error of law decision at [8] i.e. there is no evidence regarding the ownership of the family's properties and source of funding for the children.

- (iv) The main factual issues to be determined by the UT include (a) the nature and extent of the dependency on the part of S and SO upon the appellant and the sponsor; (b) the sponsor's health condition and consequent limitations in her caring and parenting. This is likely to involve considerable cross-examination.
- (v) The independent supporting evidence in relation to those issues is of some considerable vintage and requires updating.

Directions

- (1) The appellant shall file and serve a replacement consolidated bundle before 3 October 2019.
 - (2) The appellant shall file and serve a skeleton argument cross-referencing to the replacement consolidated bundle before 10 October 2019.
 - (3) The respondent shall file and serve a position statement seven days before the hearing.
 - (4) The matter will be relisted before any UT judge on the first date after 24 October 2019."
6. A further notice of resumed hearing on 14 November 2019 was sent on 24 September 2019 to the appellant's home address and to Salam & Co. In an email dated 27 September 2019, with a heading 'Resumed hearing on 14.11.19 Bradford Upper Tribunal' the appellant himself requested further time to obtain medical evidence and serve a consolidated bundle. The appellant was clearly aware that the Tribunal was concerned that the evidence as to certain key issues in the case was scant, and at that stage was attempting to obtain the relevant evidence. In a decision dated 1 October 2019, the lawyer of the Upper Tribunal gave the appellant an additional two weeks to do so i.e. the consolidated bundle needed to be served by 17 October 2019.
7. It is clear from the above chronology that the appellant was not only notified of the hearing but he was personally aware of the hearing date of 14 November and aware that he was required to file and serve his updated evidence before 17 October. There has been no explanation for the failure to comply with directions and no explanation for the appellant's failure to attend the hearing. In all the circumstances, and bearing in mind the overriding objective I decided that it was in the interests of justice to proceed with the hearing.
8. Mr Diwnycz emphasised that the appellant and A did not attend the hearing to make themselves available for cross-examination and in the circumstances the claims in their statements have not been tested and should not be accepted. He relied upon the decision letter under appeal and invited me to dismiss the appeal. I reserved my decision and now provide my reasons in writing.

Issues in dispute

9. I must resolve the following issues in dispute:
 - (i) The nature and extent of the family life between the appellant, A and her children, and the related dependency the family have upon the appellant, in the light of the evidence including medical evidence.
 - (ii) Given the factual matrix, can the appellant meet the requirements of the Immigration Rules?
 - (iii) If not, are there very compelling circumstances to outweigh the public interest in removing the appellant to Algeria, pursuant to Article 8, ECHR?

Factual findings

10. As set out in my 'error of law' decision, the FTT erred in law in making numerous references to the biological father of A's children, when there was no evidence before the FTT regarding him. Since the FTT's decision, the appellant, A, D and S have submitted brief statements dated June 2019, in which they made the following assertions:
 - (i) A has medical conditions including depression, arthritis, a 'neurological condition', 'eye issues' and diabetes. She requires the appellant to help her with day to day activities and caring for her daughter D and her son S.
 - (ii) D has cerebral palsy and is spastic diplegic. A is D's full-time carer.
 - (iii) The appellant, A, D and S live in the same household and depend upon each other. They have been a close family unit since the appellant arrived in the UK in 2016.
 - (iv) A's ex-husband has rarely seen the children and none of A's children rely on him for any type of support.
 - (v) The family support themselves through social service payments. In addition, A's elder 27 year old son who lives in London, provides the family with regular payments of approximately £500 monthly.
11. Whilst Salam & Co filed and served a 218 page bundle under a covering letter dated 27 August 2019, this did not include the June 2019 statements, the contents of which I have summarised above. The statements included in that bundle were either dated 11 February 2019 (appellant and A) or undated (D and S) but appear to have been prepared for the FTT hearing that took place

on 20 February 2019. As I observed in my 5 September 2019 adjournment decision, the vast majority of the evidence in this bundle was scant and out of date, hence the direction for a replacement consolidated bundle addressing specifically, inter alia, D's cerebral palsy and cognitive ability, A's health conditions and any consequent limitations on her ability to care for D, the source of funding and availability of support for and from A's other children.

12. Having considered all the evidence available to me I am prepared to accept that as at June 2019 the appellant was living with A and her two children, D and S and they had a close relationship. There is no evidence to undermine the letters of support written by A, D and S to this effect in June 2019. The evidence relevant to A's various health conditions is vague and difficult to follow. Prescriptions have been provided but are unaccompanied by any clear medical evidence. The claim that A is very dependent upon the appellant is difficult to resolve with the claim that A is D's full-time carer. The evidence relating to D's entitlement to disability-related benefits has not been explained and is difficult to follow.
13. I do not know what the family's current situation is because the appellant chose not to attend the hearing and has provided no explanation for this. I am satisfied that I am entitled to draw adverse inferences from the appellant's absence and corresponding failure to explain his absence. The most recent evidence available to me addresses circumstances appertaining in June 2019. The appellant was aware that the Tribunal required him to provide updated and more detailed evidence beyond this. This was explained at the hearings in June and September that he attended. Further, the appellant personally requested additional time to obtain this evidence in September and this was granted. The appellant was also aware that his claim that A's medical conditions were such that she was unable to adequately care and parent D and S without him was disputed by the respondent. As noted in my adjournment decision dated 5 September 2019, these are matters that were likely to involve considerable cross-examination. The appellant has been given every opportunity to displace the burden upon him of establishing that his claimed family life in the UK is genuine, subsisting and strong. He has failed to do so. In all the circumstances, I do not accept that as at the date of hearing, the appellant has displaced the burden of establishing that he continues to have a genuine and subsisting relationships or family life with A, D and S, or that they are in any way dependent upon him.
14. The appellant has predicated his appeal entirely upon his claimed family life with A, D and S, and has been unable to establish that these relationships are currently genuine or subsisting. The asylum claim was not pursued and the appellant has never argued that his private life (to which little weight can be attached) could support any claim to remain either under the Immigration Rules or Article 8 of the ECHR. It follows that the appellant cannot meet the requirements of the Immigration Rules. There is a strong public interest in the

appellant's removal to Algeria given his immigration history - see [13] of the FTT's decision. This cannot be outweighed by his family life given my findings of fact, and his appeal must therefore be dismissed.

Decision

15. I remake the decision by dismissing the appellant's appeal on asylum and human rights grounds

Signed: *UTJ Plimmer*

Ms M. Plimmer

Judge of the Upper Tribunal

Date: **18 November 2019**