



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal number: HU/14464/2018 [A]**

**THE IMMIGRATION ACTS**

**Heard at Field House Telephone Decisions & Reasons Promulgated  
hearing On 1 July 2020 On 22 July 2020**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**ISRAEL OLUWASEGUN SHOTAYO  
(NO ANONYMITY ORDER)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representatives**

**For the appellant:** Mr Ihieonyehi Joseph Okaigbe, solicitor with A C Gilead Solicitors

**For the respondent:** Mr David Clarke, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a Nigerian citizen, appeals with permission to the Upper Tribunal against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse him leave to remain in the United Kingdom on human rights grounds, as the spouse of a British citizen of Nigerian origin.

2. The decision of the First-tier Judge was set aside on 3 March 2020, with no findings of fact or credibility preserved. Following COVID-19 triage directions sent to the parties on 27 May 2020, the appeal was listed for a case management review hearing on 1 July 2020 to make appropriate directions for a hearing to remake the decision.
3. The triage decision recorded that there was a new matter for consideration, as the appellant's British citizen wife was pregnant with their first child. The Secretary of State had not had an opportunity to consider this factual matrix. At the hearing on 1 July 2020, Mr Okaigbe for the appellant confirmed that the appellant's wife had given birth on 3 June 2020 to a son, Josiah Iyanoluwa Shotayo.
4. For the respondent, Mr Clarke acknowledged that following the decision handed down by the Upper Tribunal on 26 February 2020 in *Birch (Precariousness and mistake; new matters : Jamaica)* [2020] UKUT 86 (IAC), the prohibition on considering new matters under section 85 of the Nationality, Immigration and Asylum Act 2002 (as amended) was not applicable to the Upper Tribunal when remaking a decision and that accordingly, weight could be given to the existence of the child and to section 117B(6) of the 2002 Act.
5. Mr Clarke undertook to consider new evidence about the child submitted on the appellant's behalf. The appellant initially disclosed only photographs of the baby, which was not sufficient. At Mr Clarke's request, I extended time on the undertaking, to allow for appropriate documents to be obtained and for the respondent to take a view thereon. In an emailed letter of 13 July 2020, Mr Clarke said this:

“The Secretary of State writes further to her correspondence of 2/7/20 and her undertaking to consider further evidence of the birth of the Appellant's British child.

In the light of this new NHS evidence confirming the birth of a baby boy to Gbemisola Salami on 3/6/20, the presumption of paternity that arises through the Appellant's marriage to Ms Salami and given that family life is not disputed, the Secretary of State accepts that the Appellant is the father of a British child.

As a consequence of this concession the Secretary of State respectfully invites the Tribunal to remake and allow the Appellant's HR appeal pursuant to 117B(6).”

6. The respondent having conceded the appeal, this appeal falls to be allowed.

## **DECISION**

7. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appeal.

Signed [Judith AJC Gleeson](#)  
Upper Tribunal Judge Gleeson

Date: 13 July 2020