Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19636/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 March 2021	**On 23 March 2021**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

NYAKALLO ELLEN RATSOLO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms Turner, Counsel instructed by Calices Solicitors
For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

This has been a remote hearing to which both parties have consented. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.

DECISION AND REASONS

1. The appellant is appealing against a decision of Judge of the First-tier Tribunal Nightingale ("the judge") promulgated on 21 February 2020 dismissing her human rights claim.

2. The appellant is a citizen of Lesotho, born on 14 June 1961, who has been in the UK since 2002.

3. She lives in the UK with her nephew, his wife, and their two daughters, all of whom are British citizens. She has been living with her nephew and his family since 2009. She has a very close relationship with her nephew's children, born in 2005 and 2014, for whom, inter alia, she provides childcare.

4. One of the arguments advanced in the First-tier Tribunal was that the appellant's relationship with her nephew's children amounts to a parental relationship. This was noted by the judge in paragraph 4 of the decision.

5. The significance of this is that if it can be said that the appellant has "a genuine and subsisting parental relationship" with her nephew's children it might be the case that section 117B(6) of the Nationality Immigration and Asylum Act would be applicable. Section 117B(6) provides that the public interest does not require a person's removal from the UK where (a) the person is not subject to deportation; (b) the person has a genuine and subsisting parental relationship with a qualifying child; and (c) it would not be reasonable to expect the child to leave the UK. Given that the appellant is not subject to deportation and it would plainly not be reasonable to expect the children of her nephew, who are qualifying children, to leave the UK (as they are British citizens and leaving the UK would entail being separated from both their parents), section 117B(6) would apply if it can be established that the appellant has "a genuine and subsisting parental relationship" with her nephew's children.

6. The judge did not make an explicit finding as to whether, for the purposes of section 117B(6), the appellant had a genuine and subsisting parental relationship with her nephew's children, but the judge did make findings about their relationship. At paragraph 33 of the decision the judge found that the children have become accustomed to the appellant providing care to them and that they would miss her. However, the judge did not accept that the relationship amounted to family life for the purposes of article 8. The judge found that the childrens' "primary family life is with their mother and their father".

7. The grounds of appeal contend that the judge erred by failing to consider whether the appellant has a genuine and subsisting parental relationship with her nephew's children.

8. The children of the appellant's nephew live with both their parents as part of a family unit. Both parents have a genuine and subsisting parental relationship with their children.

9. For the appellant to establish that she has a parental relationship with the children she would need to show that she has "stepped into the shoes" of one of the parents notwithstanding that both parents themselves have a parental relationship with the children. This is difficult, but not impossible, to establish. At paragraph 44 of *R (on the application of RK) v Secretary of State for the Home Department (s.117B(6); "parental relationship")* IJR [2016] UKUT 00031 (IAC) it was explained that:

> 44. If a non-biological parent ("third party") caring for a child claims such a relationship, its existence will depend upon all the circumstances including whether or not there are others (usually the biologically parents) who have such a relationship with the child also. It is unlikely, in my judgment, that a person will be able to establish they have taken on the role of a parent when the biological parents continue to be involved in the child's life as the child's parents as in a case such as the present where the children and parents continue to live and function together as a family. It will be difficult, if not impossible, to say that a third party has "stepped into the shoes" of a parent.

10. I asked Ms Turner to identify the evidence that was before the First-tier Tribunal which indicates that the appellant has stepped into the shoes of one of the parents of her nephew's children. She identified evidence which indicates there is a close and loving relationship between the appellant and children, where the appellant takes on a range of roles including taking them to appointments, putting them to bed, and looking after them when their parents travel. She also showed me evidence where the family describe how the appellant is the "matriarch" of the family, and is thought of as a second mother.

11. This evidence does not come close to showing a parental relationship. The evidence before the First-tier Tribunal shows that the people who have a parental relationship with the children of the appellant's nephew are their actual parents (i.e. the appellant's nephew and his wife), and that the appellant's relationship with the children is that of a loving and close relative who lives with them, assists with their care and takes a close interest in their well-being. The evidence does not, on any legitimate view, support the conclusion that the appellant has stepped into the shoes of one of the parents or that she has, in any way, assumed a parental role in their lives. Indeed, I am satisfied that there is no rational basis upon which the judge – or any judge - could have reached the conclusion that the appellant has a genuine and subsisting parental relationship for the purposes of section 117B(6) with her nephew's children. In these circumstances I do not consider it erroneous in law for the judge to not have explicitly addressed the issue but if by not

doing so an error was made, for the reasons explained above, the error was not material. The decision of the First-tier Tribunal therefore stands.

12. The decision of the First-tier Tribunal did not involve the making of an error of law and stands.

Signed

D. Sheridan
Upper Tribunal Judge Sheridan

Dated: 17 March 2021