



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-002742
First-tier Tribunal Nos:
HU/57435/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 July 2024

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

Osei Agyeman
(NO ANONYMITY ORDER MADE)

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: No representative
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

Heard at Field House on 17 June 2024

DECISION AND REASONS

Background

1. The appellant is a citizen of Ghana born in August 1981. On 31 March 2022 he applied for entry clearance under Appendix FM of the Immigration Rules on the basis of his relationship with his son, a British citizen born in July 2006. His application was refused on 23 September 2022. He appealed to the First-tier Tribunal where his appeal came before Judge of the First-tier Tribunal Bartlett ("the judge"). In a decision dated 15 May 2023 the judge dismissed the appeal.
2. The appellant applied for permission to appeal and permission was granted on 18 July 2023.
3. On 15 August 2023 the respondent filed a Rule 24 response stating that the appeal was not opposed and proposing that the decision should be remade in the Upper Tribunal.

4. On 15 November 2023 I decided, in the light of the respondent's Rule 24 response, to set aside the decision of the First-tier Tribunal without a hearing. I invited the appellant to make submissions on whether the decision should be remade in the Upper Tribunal or First-tier Tribunal. I stated that if no response was received the case would be listed for a resumed hearing in the Upper Tribunal. As a response was not received, the case was listed accordingly.

Decision of 22 March 2024

5. The case came before me on 22 March 2024.
6. The appellant was not represented at the hearing on 22 March 2024 and none of his family in the UK attended. He did not submit any evidence to support his case. I decided to adjourn the hearing in order to provide the appellant with an opportunity to obtain and submit relevant evidence. In paragraphs 4 and 5 of my decision, I set out the type of evidence that I considered would be of assistance to the Upper Tribunal in determining the appeal. I stated:

4. It is a matter for the appellant (who may wish to obtain legal advice) to decide what evidence to adduce, but the Upper Tribunal is likely to be assisted by a detailed witness statement by him setting out, amongst other things, a chronology of where he has lived, the work and other activities he has undertaken in the UK (including dates), details of the children he has and their circumstances (including his relationship with them), up to date information about his family's circumstances in the UK (including any medical issues), and the circumstances in which he and his family lived in Ghana.

5. In addition, the Upper Tribunal is likely to be assisted by up-to-date witness statements from family members and possibly others (including, but not limited to, the appellant's partner and British child). The appellant should be aware that it is expected that witnesses living in the UK will attend the resumed hearing in order that they can be cross-examined on their witness statements. Less weight is likely to be given to a statement where the maker of the statement could, but without good reason does not, make him or herself available at the hearing.

Adjournment

7. The appellant did not submit any new evidence (apart from a short letter from his son) prior to the hearing on 17 June 2024. He did not seek an adjournment and asked that evidence that was before the First-tier Tribunal be used to decide the case. Despite neither party requesting an adjournment I have considered whether it is, nonetheless, in the interests of justice to adjourn the case again given the absence of evidence submitted by (or on behalf of) the appellant.
8. In my view, a further adjournment is not an interest of justice as the case has already been adjourned to enable the appellant to provide further evidence and my decision of 22 March 2024 set out in considerable detail the type of evidence that would assist the Tribunal in deciding the case. The appellant has not indicated that he wishes to have further time in order to obtain evidence. He has also not indicated that his partner and son could not attend to give oral evidence but would be able to do so on a different date. In the circumstances, it is in accordance with the overriding objective to proceed.

Immigration Rules

9. In the appellant's "appeal reasons" submitted in the First-tier Tribunal, which the appellant is relying on before me, he contends that he meets the requirements under Appendix FM to be granted entry clearance as a parent of a child in the UK.
10. One of the conditions that must be met under this route to a grant of entry in the Immigration Rules is that the appellant must have sole responsibility for his son (paragraph E-ECPT2.3(a) of Appendix FM) if the conditions in paragraph E-ECPT2.3(b) do not apply. They do not apply because the evidence before me (taken from the "appeals reasons") indicates that the appellant's son lives with his mother who is the appellant's partner. Accordingly, the appellant needs to establish that he has sole parental responsibility for his son.
11. There is very little information before me about the current circumstances of the appellant's son, beyond that he is 17 years old. The appellant's son has submitted a short letter, dated 6 June 2024, stating that the absence of his father makes him sad and worried and he sees his mother stressed every day. He also states in the letter that the family has always relied on his father's income and that he loves living in the UK and wants his father to be able to join him. This extremely brief letter is lacking in any details and is insufficient for me to discern the relationship between the appellant and his son, and the extent to which the appellant has parental responsibility. Moreover, in the absence of the appellant's son submitting a signed witness statement and making himself available for cross-examination, I am not prepared to attach weight to this letter.
12. The appellant has not submitted evidence that is capable of demonstrating he has sole responsibility for his son. I therefore find that the requirements of the Immigration Rules are not satisfied.

Article 8 ECHR outside the Rules

13. The appellant's case under article 8 relies on his relationship with his partner and son.
14. Given that the appellant's son is a minor, I accept - despite the lack of evidence before me - that the appellant and his son have a relationship that engages article 8(1). The case therefore turns on whether refusing entry would breach article 8 because the effect would be unjustifiably harsh on the appellant, his partner or his son.
15. As stated earlier, there is an almost complete absence of evidence in this case. Despite adjourning the case previously in order to enable the appellant to provide witness statements (and to enable his son and partner to attend the hearing so as to be cross-examined on their witness evidence) no statements have been provided, and the appellant's son and partner have not attended.
16. Whether refusing entry will have unjustifiably harsh consequences requires a fact specific assessment, based on a careful consideration of evidence. In this

case, the absence of evidence means that I have no idea what the effect of the refusal is likely to be. The absence of evidence (in particular, witness statements from the appellants' son and partner) means that the appellant has not come close to establishing that there would be unjustifiably harsh consequences for him, his son or his partner, as a result of entry being refused. I find, therefore, that refusing entry would not be disproportionate under article 8 ECHR.

Notice of decision

The decision of the First-tier Tribunal was set aside by my decision of 15 November 2023. I now remake the decision by dismissing the appellant's appeal.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 July 2024