Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08976/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 2 December 2019	**On 17 December 2019**

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

AOA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: The appellant in person
For the Respondent: Mr Bates, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought with permission granted by the Upper Tribunal against the decision of the First-tier Tribunal which, following a hearing in Manchester Piccadilly on 4 July 2019, dismissed the appellant's appeal on human rights grounds against the decision of the respondent to refuse the appellant's human rights claim.

2. Before me this morning the appellant appears in person. The respondent is represented by Mr Bates. The appellant told me that he was involved in the events that took place at Fishmonger's Hall in London last week. He

said that as a result some of the documents upon which he had been working in connection with this case had been lost. I asked him in the circumstances whether he was content for the hearing to go ahead or whether he would prefer for it to be adjourned. The appellant said that he wished the hearing to go ahead. In the event, the appellant represented himself ably. He had before him the judge's decision and the materials that were before the judge. The appellant also made reference to a number of documents that post-date the decision of the judge. I shall refer to those again in due in due course.

3. The judge noted that the appellant is a citizen of Nigeria who appealed consequent upon the decision to make a deportation order against him, following his conviction for criminal offences of dishonesty for which he was sentenced in September 2017 to 28 months' imprisonment. The judge noted that the case for the appellant turned upon the effect that his deportation would have upon the appellant's family. The appellant has a partner and children. One of the children, who I shall call R, has certain problems. In paragraph 20 of the decision, the judge said that he had taken into account all the documentary evidence in the appellant's bundle "and in particular that evidence relating to the appellant's son [R]". I note that, since the grounds of challenge contend that certain documentation to which I shall refer in due course has not been considered by the judge. The judge heard evidence from the appellant and from his partner. The judge also noted the submissions on behalf of the respondent and the appellant.

4. Beginning at paragraph 50, the judge turned to set out his findings. The judge noted that the appellant had entered the United Kingdom with his wife as a visitor, and then remained in the United Kingdom illegally. The wife was not the same person as the current partner. The judge observed that the appellant and his current partner had begun their relationship at a point when it was evident that his position in the United Kingdom was, in effect, problematic.

5. The judge recorded at paragraph 53 that, whilst the appellant had been serving a sentence of fourteen months' imprisonment, he was not able to provide daily care for the four children who made up the family. The judge accepted that that would have made the partner's task more difficult, as she was working full-time. However, she had been able to cope, despite the difficulty.

6. At paragraph 54, the judge made reference to the serious offences that the appellant had committed. At paragraph 55, the judge said it was clear from the appellant's own testimony "that he sat at his computer and used his mobile phone to commit the offences when he claims he was the primary carer of his children". The judge did not consider that this showed the appellant had regard to the best interests of his children at that time.

7. At paragraph 57, the judge noted the submissions made on behalf of appellant as saying that he had made one bad decision. The judge said that was not case, since the appellant had committed multiple offences.

8. At paragraph 59, the judge turned to the issue of the children. The judge said: "I had particular regard to the evidence from the Team Around the Child". That is a team that includes local authority professionals but also, the appellant says, the parents of the children. I shall turn to the documentation in that regard in a moment.

9. At paragraph 60, the judge noted the appellant's contention that it would be unduly harsh for the family if following the appellant's deportation his partner had to give up work. The judge disagreed. He concluded that the family unit without the appellant "would not be destitute but could receive state support. Support from the Team Around the Child would continue to protect [R's] best interests".

10. At paragraph 62, the judge concluded that it would be unduly harsh to expect the appellant's partner and children to return to Nigeria. The issue, therefore, was whether it would be unduly harsh for the appellant to be deported and for the family to remain in the United Kingdom. In that regard the judge said this at paragraph 63:-

> "I do not accept for the reasons I have set out that if the Appellant was removed to Nigeria alone that would cause him undue hardship or cause his partner and the four British citizen themselves undue hardship. I make that finding also in relation to the child [R]. The evidence indicates that although it caused some difficulty when the Appellant was in prison [R's] issues are being addressed by the his mother and the multidisciplinary agencies involved with the Team Around the Child."

11. At paragraph 74, the judge took account of section 117C(5) of the Nationality, Immigration and Asylum Act 2002. The judge accepted the appellant is in a genuine and subsisting relationship with a qualifying partner and child but he did not accept that the effect of deportation on the partner or children would be unduly harsh.

12. The challenge to the judge's decision was settled by Counsel. The grounds contended that R suffers developmental delay and that autism spectrum disorder is suspected but remains undiagnosed, for what are said to be clinical reasons. Reference is made to AB45 and AB46, being documents emanating from Cumbria County Council, to which I will return. It is contended that the judge did not give consideration to AB45 in particular. Accordingly, the judge had either failed to have regard to relevant evidence or alternatively had not given sufficient reasons for his findings.

13. Before me the appellant has relied upon those grounds and expanded upon them with some skill. He refers to AB45, which is a document dated 13 May 2019 composed by Mary Cooper, who is the Area Special

Educational Needs Co-ordinator (SENCO) for Cumbria County Council. The document is in the form of an update sheet written following a meeting at which the parents were present along with R and Ms Cooper and another SENCO from [named] School. The update noted amongst other things that R had been allocated a place at the School from September 2019. There is then the following:-

> "Parents are working together well at home to provide the support that R needs to help him continue to make progress. Since [R's] Dad has returned to the family home R is much more settled. Dad is tuned into [R's] needs and cares for him when he is not at nursery and mum is at work."

14. The document also recorded that R was then awaiting an appointment to see a speech therapist. Copies of the document were sent, amongst other places, to a paediatrician.

15. AB46 is a document earlier in date, namely 11 December 2018. It is written from the NHS Cumbria Partnership by Lauren Show who is a Health Visitor. It states that:-

> "[R] is requiring care above and beyond what a child of his age should require. It would be detrimental to his progress to remove him from this support at present, he is due to start school in 9 months time and the support which is now in place from his team of professionals and both his parents will maximise his potential to ensure his transition is as seamless as possible."

16. At paragraph 47, there is a document dated 24 September 2018, again written by Mary Cooper. Again, this noted previous advice in respect of how to handle R and help him in his studies. Amongst the agreed actions was the organisation of a Team Around the Child meeting.

17. At page 49, a further document from Mary Cooper, dated 11 February 2019, recorded that R was awaiting an appointment to see the community paediatrician. R was said to continue to do things very much on his own terms and it took adults who know him well to work with him in a certain way before he would do what they ask him to do. He was said to be behaving very much as an individual and not as a member of a group of children.

18. The appellant made reference to the judgment of Lord Carnwath in KO (Nigeria) [2018] UKSC 53, where he addressed the issue of "unduly harsh" in the current context. The appellant stressed the fact, which is not in dispute, that in deciding whether something is unduly harsh, one must look at the effect on the child and not judge that by reference to the conduct of the appellant.

19. That conduct has, in effect, already been taken into account, in that as a foreign criminal sentenced to between one and four years' imprisonment, section 117C(5) states that Exception 2 applies where the effect of deportation on a partner and child would be unduly harsh.

20. We are, therefore, looking at the position where something more than harsh needs to be shown. The appellant submits that this test is satisfied by the materials that were in front on the First-tier Tribunal Judge. R was, in the appellant's submission, not just an ordinary child; he had the issues described in the various documents emanating from Cumbria County Council. Those documents had noted the improvement in R's behaviour, since the appellant had returned from prison. The appellant was then looking after the children full-time.

21. Mr Bates submitted that the challenge was in the nature of a disagreement rather than one which disclosed an error of law on the part of the First-tier Tribunal Judge. Having considered the decision and the challenge made to it, both in writing and by the appellant, I have to say that on the evidence as it was before the First-tier Tribunal Judge, I agree with Mr Bates. I do not consider that there is an error of law in this decision, such as to necessitate it being set aside. I have already noted that the judge made express reference to the Cumbria County Council documentation and said he had had particular regard to it. It is trite law that the judge did not need to refer to each and every item of evidence.

22. I consider that the judge has adequately analysed that evidence and given reasons for drawing conclusions from it, resulting in the appeal being dismissed. The main problem for the appellant is that the documentation before the judge, whilst it notes various issues relating to R, does not include a clinical diagnosis from a suitably qualified medical professional. I accept that at the time R was at an age where that may not have been appropriate. However, moves were being made for him to have appropriate help from a medical professional and the appellant says that that has indeed just happened.

23. The appellant points in his position as a parent as being an integral part of the Team Around the Child. Whilst that may be so, in the context of the evidence overall and having regard to the appellant's own background, some degree of caution is required in accepting without more what the appellant says in that regard. The judge came to the conclusion that for the reason he gave in paragraph 55 he rather doubted the nature and extent of the care and concern that the appellant had provided whilst he was the primary carer, given that the appellant had been able during that time to expend time and effort committing the criminal offences for which he was convicted. The judge also gave reasons why, if the appellant were deported, he considered that the mother of R and the other children would be able to cease work. Albeit that this might require the family to become dependent upon benefits, it would provide a stable parental presence in the life of R.

24. On the evidence before the judge, there was nothing to show that the presence of the appellant, as opposed to the appellant's partner, at home with R would still be something that was necessary in order to alleviate any problems that R might have.

25. I appreciate that this conclusion is disappointing to the appellant. As I pointed out in the course of submissions, however, the question before me is whether on the state of the evidence as it was before the First-tier Tribunal Judge that judge was entitled, for the reasons he gave, to reach the conclusion he did. I have explained why I have found that this is the position. However, the appellant tells me that matters may well have moved on, such that we may be at or close to the point when a relevant medical professional will give a diagnosis of R. Along with that diagnosis, there may well be evidence from the professional that goes to the heart of the matter; namely whether there is a need for R to have the continuous physical presence of the appellant in his life, as opposed merely to the presence of his mother.

26. Depending on what the reports in due course disclose, it may be that the appellant can make submissions to the Secretary of State that his case is now to be viewed in a different light. As matters stand, however, for the reasons I have given, I find that there is no error of law in this decision such as to necessitate the decision being set aside.

27. The appellant's appeal is accordingly dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date: 11 December 2019

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber