Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: HU/20081/2019 (P)**

THE IMMIGRATION ACTS

Decided under rule 34 (P)	**Decision & Reasons Promulgated**
On 28 October 2020	**On 4 November 2020**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

D S

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation (by way of written submissions)

For the appellant: No submissions received.

For the respondent: No submissions received

DECISION AND REASONS

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Background

1. This appeal comes before me following the grant of permission to appeal to the appellant by Upper Tribunal Judge Rintoul on 30 July 2020 against the determination of First-tier Tribunal Judge Ficklin promulgated on 9 April 2020 following a hearing at Manchester on 9 March 2020.

2. The appellant is a national of Ghana born on 15 March 1973. He appeals against the decision of the respondent on 19 November 2019 to refuse his application for leave based on his private/family life with his partner AA), her adult daughter (RT) and RT's child (PU) who was aged four at the date of the hearing. The appellant entered the UK in transit in 2002 but never departed. He did not seek to regularise his stay until October 2019.

3. The judge heard oral evidence from the appellant, AA and RT. He accepted that the appellant and AA were in a genuine and subsisting relationship and that they had been cohabiting since January 2017 but that there were no insurmountable obstacles to the continuation of family life in Ghana and that EX.1(b) did not apply. He found that there was no family life between the appellant and RT. He found that the appellant helped with PU's case but that he did not have a parental relationship with him and that EX.1(a)(i) did not apply. With respect to paragraph 276ADE he found that there would not be very significant obstacles to his re-integration to a country where he had spent the majority of his life. He took account of the fact that the appellant spoke English and not was not a financial burden on the state but that all the relationships were formed at a time when the appellant was here unlawfully. He found that AA's income exceeded the required threshold under the Immigration Rules but he found that the principles in Chikwamba [2008] UKHL 40 did not apply because the appellant and AA were unmarried. Accordingly, he dismissed the appeal.

4. The appellant sought permission to appeal. Two grounds were put forward. The first was that the judge misdirected himself in holding that the Chikwamba principles did not apply because the appellant was unmarried. The second was that that the judge erred in his finding that there was no parental relationship between the appellant and PU and that this impacted upon the best interests consideration. The First-tier Tribunal refused the application for permission but it was granted upon renewal to the Upper Tribunal.

Covid-19 crisis: preliminary matters

5. The matter would ordinarily have then been listed for a hearing but due to the Covid-19 pandemic and need to take precautions against its spread, this did not happen and instead directions were included in the grant of permission sent to the parties on 14 August 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.

6. The Tribunal has not received any submissions from either party in compliance with the directions. The appellant's representatives, have, however indicated that the appellant has changed his mind about withdrawing his appeal (as he had requested in an earlier email to the Upper Tribunal) and wished to proceed on the basis proposed by the Tribunal. The respondent was not copied in to their notification to the Tribunal. I now consider whether it is appropriate to determine the matter on the papers.

7. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly"*. To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).

8. I have had careful regard to all the evidence before me before deciding how to proceed. I take the view that a full account of the facts are set out in those papers, that the arguments for and against the appellant have been clearly set out and that the issues to be decided are uncomplicated. I have regard to the importance of the matter to the appellant and his family and consider that a speedy determination of this matter is in his best interests. I am satisfied that the grant of permission with directions was properly served on the respondent and that she

has had ample opportunity to respond. I consider that I am able to fairly and justly deal with this matter on the papers and now proceed to do so.

Findings and reasons

9. I have considered the evidence, the determination, the grounds for permission and the grant of permission.

10. With respect to ground 1, the judge properly took the Chikwamba judgment into account but wrongly concluded that it did not apply because the appellant and sponsor were not married and so did not meet the requirements of the Immigration Rules. Given that the judge found that the relationship was between them was genuine and subsisting and that they had been living together in a relationship akin to marriage for over two years preceding the hearing and the application for leave, he erred in finding that marriage was necessary for the rules to be met. The circumstances would suggest that the appellant would meet the requirements of a partner for the purposes of the rules.

11. It is also argued that the judge was wrong to find that there would be no disruption to PU's life beyond the emotional distress caused by the appellant's departure and that this should have been factored into the consideration of whether it was proportionate to expect the appellant to return to Ghana to apply for entry clearance. This argument overlaps with the second ground, upon which it is largely dependent, and I now turn to consider it.

12. Ground 2 argues that the judge erred in his finding that there was no parental relationship between the appellant and PU. PU is the grandson of the appellant's partner. He lives with RT, his mother. She is a single parent. The claim in the grounds that the judge failed to take account of the fact that RT worked full time is misconceived as, by her own written and oral evidence, she worked part time and not full time. The judge accepted that AA and the appellant were both involved in the child's care but found that this did not amount to a parental responsibility. I can see no error in his findings and conclusions. According to the AA's witness statement, she and the appellant looked after PU at weekends when RT worked and they would sometimes collect him from school and take him out to eat. This is confirmed by RT. I cannot see how that can be said to amount to a parental relationship. The child continues to live with his mother and the care he receives from his grandmother and the appellant does not go beyond what one would expect from grandparents. The judge was entitled to find that the appellant's role in PU's life did

not reach the level of a parent (at 17); it cannot sensibly be argued that the appellant had 'stepped into the shoes' of a parent. He was also entitled to find that the appellant's absence would not mean that AA would be unable to continue caring for PU on her own, if she chose to stay in the UK without the appellant, or that some other arrangement could not be made (ibid). His conclusion that EX.1(a)(i) did not apply and that the best interests of the child would not be adversely affected by the appellant's departure, was properly reached.

13. The judge also found that the appellant would not face very significant obstacles on re-integration on return to Ghana and, further, that he and AA would not face insurmountable obstacles to continuing their family life there (at 19-22). These findings have not been challenged in the grounds and so they stand. The judge also considered whether there were any exceptional circumstances outside the rules which warranted a grant of discretionary leave but found there were none (at 23-29). That conclusion has not been challenged either.

14. The consequence of the absence of any challenge to the conclusions summarised in the preceding paragraph, and my finding that the judge did not err with respect to his conclusion about there being no parental religious between the appellant and PU, is, in effect, that the judge's error in respect to ground 1 is not a material one because the appellant and AA have the option to continue their family life in Ghana and because their separation from PU does not amount to a breach of article 8 for any one of them. It is, thus, immaterial that the judge did not consider whether it would be disproportionate to require the appellant to apply for entry clearance from Ghana because the judge's finding that the appellant and AA could live in Ghana went unchallenged and provides them with an alternative remedy.

Decision

15. The decision of the First-tier Tribunal does not contain any material errors of law and it is upheld. The appeal is dismissed.

Anonymity

16. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I continue the anonymity order made by the First-tier Tribunal judge.

17. Unless the Upper Tribunal or a court directs otherwise, no reports of these proceedings of any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent.

Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to protect the identity of the child.

Signed:

R. Kekić
Upper Tribunal Judge

Date: 28 October 2020