Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/22168/2018

THE IMMIGRATION ACTS

Heard at Bradford
On 15 July 2020
At a remote hearing via Skype

Decision & Reasons Promulgated
On 17 July 2020

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

ENTRY CLEARANCE OFFICER

Appellant

and

MASTER A
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: None
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

Unless and until a Tribunal or court directs otherwise, the respondent (A) is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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.

Introduction

1. The respondent ('A') is a minor, having been born in 2004. He is 15 years old but will shortly turn 16. In this decision I refer to medical evidence relevant to his younger siblings. For all these reasons, I make an anonymity order.

2. In this decision, I remake the substantive decision on whether the appeal brought by A, against a decision of the entry clearance officer ('ECO') dated 28 September 2018, refusing his entry clearance application to join his parents and siblings in the United Kingdom ('UK'), should be allowed or dismissed on human rights grounds.

3. In a decision promulgated on 9 March 2020, Upper Tribunal ('UT') Judge King gave reasons for setting aside a decision of the First-tier Tribunal ('FTT') sent on 21 August 2019 ('the 2019 FTT'), allowing A's appeal on human rights grounds. A transfer order for the matter to be re-made by another UTJ was made on 10 March 2020.

Parties

4. The ECO appealed against the decision of the 2019 FTT and therefore remains the appellant. For convenience, I shall refer to the appellant as the ECO. The ECO was represented by Mrs Pettersen, who attended the hearing remotely by Skype.

5. A is a citizen of Nigeria who continues to reside there. Both his parents are Nigerian citizens. He resided with his mother in Nigeria, for the first three years of his life, before she left in 2007 to join his father and to study in the UK. His father had been in the UK from 2015. A was left with an aunt (and her family) in Nigeria. His parents visited him there in 2008 and in 2018. In 2010 A went to live with an uncle (and his family) in South Africa. He was very unhappy there and was the subject of sustained bullying as a result of being a 'foreigner'. In 2018, he returned to live with his aunt in Nigeria. His aunt and her family emigrated to America in March 2020 and A currently resides in their home with someone A and his parents refer to as 'the house help'.

6. A's parents and younger siblings reside together in the UK. A's two brothers (B and P) were born in the UK in 2009 and 2011 respectively. B was registered as a British citizen earlier in 2020, having lived in the UK for 10 years from his birth.

7. A was not legally represented but his parents attended the hearing remotely by Skype to provide evidence on his behalf.

Background

8. In a decision sent on 1 June 2017 ('the 2017 FTT'), FTT Judge Thomas allowed A's mother's appeal against the refusal to provide her with leave to remain in

the UK, on human rights grounds. The 2017 FTT made important findings of fact, which form the starting point for my consideration of the relevant factual matrix. I summarise those findings below.

(i) A's parents' evidence was credible.

(ii) A's mother came to the UK in 2007 as a student. After four years she was awarded an LLB degree at East London University. During her time as a student she worked in accordance with her visa conditions. A's father came to the UK in 2005 but had not worked. Both have qualifications, speak English and would be able to work if given the opportunity to do so. A's mother overstayed her leave in 2014 before making an application to remain pursuant to Article 8 (which was ultimately granted).

(iii) B and P were born in the UK. They have significant global developmental delay giving rise to complex educational, social and mental needs, in relation to which they have received wide-ranging educational, social care and medical support in the UK.

(iv) In addition, P was born with a swollen face and has a diagnosis of lymphatic malformation left cheek / sidewall and left anisometropia / amblyopia. He has received medical treatment at Great Ormond Street Hospital and was then at a crucial stage of his treatment.

(v) It would not be in the best interests of the children to return to Nigeria given the support they rely upon in the UK.

(vi) The countervailing factors outweighed the public interest such that the decision to remove the family would breach Article 8 of the ECHR, and the appeal was allowed on human rights grounds.

9. Following the 2017 FTT decision, A's parents together with B and P were each granted leave to remain outside of the Immigration Rules for a period of 30 months, in a letter dated 9 October 2017. This letter states: "*You can apply to renew this leave, and you may become eligible to apply for indefinite leave to remain (settlement) after 120 months if you qualify*."

10. In an application dated 2 July 2018, A applied for entry clearance to join his parents and brothers in the UK. This was refused in a decision dated 28 September 2018. The sole reason offered by the ECO for A not meeting the requirements of the Immigration Rules is this: the ECO was not satisfied that A's parents are in the UK "*with limited leave on a route that leads to settlement*". In a decision dated 27 February 2019, the Entry Clearance Manager upheld the ECO's decision observing that the decision would not breach Article 8 because it would not result in unjustifiably harsh consequences for A.

11. Although the 2019 FTT allowed A's appeal, this decision was set aside by UTJ King. He summarised the updated circumstances of the family from evidence provided by A's parents. The ECO's representative at the time did not dispute the credibility of the evidence but was concerned that it did not present the entire picture. UTJ King observed that the evidence regarding A's

circumstances would benefit from greater clarity and particularisation, and the hearing was adjourned for that reason. A's parents have sought to provide additional evidence by way of email. The relevant evidence can be summarised as follows:

(i) short emails and letters from A's parents describing A's current circumstances – these explain that the family A had been residing with in Nigeria had left Nigeria permanently on 20 March 2020 to settle in America; A has remained in their family home on his own with the 'the house help' (confirmed to be 18 years old);

(ii) a short email and a longer letter from A explaining the frustration, pain and loneliness he feels living in Nigeria without any family to turn to;

(iii) a letter from A's uncle in South Africa explaining that A suffered "*incessant bullying*" by schoolmates due to "*xenophobic tendencies*"; he also explained that the family came under severe financial pressure and in any event A had to return to Nigeria as his visa expired (and presumably could not be renewed because of the family's financial circumstances);

(iv) letters from the husband of A's aunt (with whom he was residing in Nigeria until their departure to America) explaining that he believes A to be a vulnerable child, who has suffered adversely because of his lengthy separation from his own family; and would suffer further when they leave for America; copies of flight details appearing to confirm that the family left Lagos for Houston on 20 March 2020

(v) progress reports from A's school, Dee Unique International; this describes his parents having paid his school fees and having been kept updated on his progress: although he performs well enough academically, he is lonely and troubled and has received counselling; his anxiety increased during the first term of 2020; the school believe he is underperforming and have expressed concern for him during the impending school closure as a result of the global pandemic;

(vi) a letter from A's grandmother and supporting medical evidence to the effect that it would be difficult for her to care for A;

(vii) messages between A and various family members and messages between family members concerning A;

(viii) payslips confirming that A's mother has been employed since October 2019 as a key worker for children 16+ specialising in housing and wellbeing;

(ix) payslips and a contract of employment confirming A's father's full-time employment as a key worker for children 16+ since August 2019;

12. The evidence submitted to the UT must be considered together with the evidence submitted to the 2019 FTT. This includes witness statements from A's mother and father, both dated 23 July 2019 in which they describe A's extreme sadness and increasing emotional trauma, particularly as the family he was

residing with in Nigeria were soon to emigrate to America; they described themselves as very hard-working, both in employment, living in a four bedroom house and in a position to maintain and accommodate A.

13. This matter was listed for a telephone case management hearing on an expedited basis before UTJ Bruce on 25 June 2020. At that hearing A's parents asked for a hearing as soon as possible because A was living in Nigeria with 'the house help' and was all alone. They made it clear that they were happy for the hearing to be conducted remotely, using Skype. Mr Walker represented the ECO at this hearing and agreed that the matter should be expedited and conducted remotely. The matter was listed on an expedited basis given the circumstances.

Hearing

14. As set out above, this hearing took place remotely by Skype from Bradford IAC. At the beginning of the hearing I took the parties through the documentation available to me. Mrs Pettersen noted that there was additional evidence, not available to the FTT and made it clear that she had no objection to this evidence being admitted. I gave Mrs Pettersen additional time to consider the 2017 FTT decision. This was not available in her papers but she was able to retrieve it from the Home Office's system.

15. After preliminary discussions, Mrs Pettersen accepted the following:

    (i) A had a right of appeal on human rights grounds. His family life with his parents and siblings in the UK was accepted, notwithstanding their geographical distance. Mrs Pettersen therefore did not dispute that A's right to family life was engaged under Article 8.

    (ii) Mrs Pettersen also accepted this proposition: although the appeal was on human rights grounds, A's ability to demonstrate that he met the requirements of the Immigration Rules was in the particular circumstances of this appeal, determinative. A positive finding in respect of each of the requirements of para 301 of the Immigration Rules would amount to a finding that there was family life and that the refusal of entry clearance betrayed a disproportionate lack of respect for that Article 8 right. In other words, compliance with the Immigration Rules would mean that there was nothing on the SSHD's side of the scales to show that the refusal of entry clearance could be justified: see TZ (Pakistan) and PG (India) v SSHD [2018] EWCA Civ 1109. If the requirements of para 301 are met, Mrs Pettersen accepted there would be no need to go on to conduct an Article 8 balancing exercise because this was one of those cases where meeting the rule would be sufficient for the appeal to be allowed on Article 8 grounds.

    (iii) Mrs Pettersen accepted that the parents could adequately maintain, accommodate and care for A, in the UK.

(iv) Mrs Pettersen noted that the ECO did not accept this initially but conceded that both parents been given limited leave to enter "with a view to settlement". Mrs Pettersen was correct to make this concession because the terms of the letter dated 9 October 2017 are clearly to that effect. This specifically addresses future applications by stating in terms "*if your circumstances remain the same, following a continuous period of lawful leave to remain in the United Kingdom for 10 years and subject to meeting the requirements of the Immigration Rules at the time, you may apply for indefinite leave to remain in the United Kingdom.*"

(v) It followed, and Mrs Pettersen expressly accepted, that the only remaining issue in dispute related to whether the test in para 301(i)(c) was met i.e. are there "serious family or other considerations making the exclusion of" A "undesirable"?

(vi) In determining that issue Mrs Pettersen accepted the following important matters: the 2017 FTT's findings are an important starting point; and thus far, the parents had provided credible evidence regarding the circumstances of A and his family in the UK.

16. A did not have legal representation but I explained the issue in dispute and the high threshold to be met to his parents. I then asked A's mother questions in order to clarify the current circumstances of A and his family. I provide a summary of that evidence here.

(i) A's parents and P had made an in-time application to extend their current leave (this is not necessary for B who is a British Citizen).

(ii) She and her husband continue to be employed as key workers. She brings home approximately £1500 per month and her husband brings home around £1300 per month

(iii) B was coping well. Although he continued to have special educational needs he was doing well at school. B suffered from asthma and was severely ill with this when they visited Nigeria last year. Although there had been improvement in P's condition, a further lump had reappeared and the family were awaiting a re-referral to Great Ormond Street Hospital. There were improvements but a great deal of uncertainty remained surrounding P's medical position. They could not return to live in Nigeria because of the medical conditions of the children.

(iv) A lived with his aunt and her family after returning from South Africa but they left to live in America permanently toward the end of March. A now lived with 'the house help' on his own and was suffering terribly. His loneliness and anxiety was made even worse as a result of the global pandemic. He had not been able to attend school and was desperate and often in a state of heightened anxiety.

(v) There had been previous attempts to obtain entry clearance for A in 2008 but these were unsuccessful for a combination of reasons.

17. Mrs Pettersen cross-examined A's mother very briefly, and only in relation to two themes. First, A's mother confirmed that the aunt and her family had definitely emigrated to America in late March. Second, A's mother explained that her own mother (A's 62 year old grandmother) lived a long distance away from A and was unable to care for him because of her medical condition. It was explained that she was very unwell indeed and was awaiting surgery, which could not take place because of the pandemic. A's mother explained that her mother's health was a "*major concern*" for her, and there was just no prospect of her being in a position to care for a teenage boy.

18. A's father gave very brief evidence: he confirmed that A's grandmother in Nigeria was unable to look after him. He emphasised that they had tried everything but there was no one else available to look after A. Mrs Pettersen did not cross-examine A's father.

19. I then heard brief submissions from Mrs Pettersen. She only addressed the single issue in dispute. She acknowledged that A's parents' evidence was credible and did not seek to impugn their evidence or the documentary evidence relied upon. She submitted that when that evidence was taken at its highest, it could not be properly said that there are "serious family or other considerations making the exclusion of" A "undesirable". Mrs Pettersen highlighted the following matters: A was safe and secure in accommodation in Nigeria and had the company of 'the house help'; he had the option of moving to be with his maternal grandmother; he was doing well enough at a school paid for by his parents and the bullying he sustained had ceased. Mrs Petersen accepted that this is not a case in which it could properly be suggested that A's family in the UK could reasonably relocate to Nigeria: she accepted the 2017 FTT findings in this regard and accepted that the compelling circumstances in support of A's younger brothers remaining in the UK had not materially changed. Rather, Mrs Pettersen submitted that the status quo could continue without any breach of the Immigration Rules or Article 8 of the ECHR.

20. I gave A's mother an opportunity to respond to those submissions on A's behalf. She emphasised that A's distress had escalated during the pandemic to such an extent that she was constantly anxious and worried about him. She explained that both her and her husband were worried not just as A's parents but also in the light of their expertise as key workers for vulnerable children in the UK. They are very worried that A is becoming increasingly vulnerable to grooming and bad influences without parental oversight. A's mother emphasised that her own mother was barely well enough to look after herself and simply could not care for a teenage boy; indeed she has made it clear to them that she simply would not be able to look after him.

21. I reserved my decision, which I now provide with reasons. At the end of the hearing both Mrs Pettersen and A's parents confirmed that they had a full and fair opportunity to put their respective cases, and were satisfied that the remote hearing had proceeded fairly and smoothly.

Legal framework

22. The only ground of appeal is human rights. A relies on Article 8 of the ECHR and asserts that the decision to refuse to grant him entry clearance is not a proportionate response to the need to maintain immigration control. A submits that this is not a proportionate response, because he can demonstrate that at all material times, including as at the date of hearing, he met the requirements of the Immigration Rules, specifically para 301. This reads as follows (my emphasis):

> "301. The requirements to be met by a person seeking limited leave to enter or remain in the United Kingdom with a view to settlement as the child of a parent or parents given limited leave to enter or remain in the United Kingdom with a view to settlement are that he:
>
> (i) is seeking leave to enter to accompany or join or remain with a parent or parents in one of the following circumstances:
>
> (a) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is being or has been given limited leave to enter or remain in the United Kingdom with a view to settlement; or
>
> (b) one parent is being or has been given limited leave to enter or remain in the United Kingdom with a view to settlement and has had sole responsibility for the child's upbringing; or
>
> (c) one parent is being or has been given limited leave to enter or remain in the United Kingdom <u>with a view to settlement</u> and <u>there are serious and compelling family or other considerations which make exclusion of the child undesirable</u> and suitable arrangements have been made for the child's care; and
>
> (ii) is under the age of 18; and
>
> (iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and
>
> (iv) can, and will, be accommodated adequately without recourse to public funds, in accommodation which the parent or parents own or occupy exclusively; and
>
> (iva) can, and will, be maintained adequately by the parent or parents without recourse to public funds; and
>
> (ivb) does not qualify for limited leave to enter as a child of a parent or parents given limited leave to enter or remain as a refugee or beneficiary of humanitarian protection under paragraph 319R; and

> (v) (where an application is made for limited leave to remain with a view to settlement) has limited leave to enter or remain in the United Kingdom; and
>
> (vi) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity."

23. The wording at para 301(i)(c), "serious and compelling family or other considerations which make exclusion of the child undesirable" mirrors the wording to be found in the parallel provision at para 297(i)(f). The former provision applies to an applicant (like A) with a parent with limited leave, who is seeking limited leave to enter. The latter applies to an applicant with a parent with indefinite leave to remain ('ILR') or settled status, who is seeking indefinite leave to enter. Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 00088 (IAC) (Mr Justice Blake and Upper Tribunal Judge Dawson) confirms that the relevant test in para 297(i)(f) is a high one. Blake J emphasised the high threshold to be met at [34]:

> "In our view, 'serious' means that there needs to be more than the parties simply desiring a state of affairs to obtain. 'Compelling' in the context of paragraph 297(i)(f) indicates that considerations that are persuasive and powerful. 'Serious' read with 'compelling' together indicate that the family or other considerations render the exclusion of the child from the United Kingdom undesirable. The analysis is one of degree and kind. Such an interpretation sets a high threshold that excludes cases where, without more, it is simply the wish of parties to be together however natural that ambition that may be."

24. The headnote in Mundeba includes the following:

> *"The exercise of the duty by the Entry Clearance Officer to assess an application under the Immigration Rules as to whether there are family or other considerations making the child's exclusion undesirable inevitably involves an assessment of what the child's welfare and best interests require.*
>
> *Where an immigration decision engages Article 8 rights, due regard must be had to the UN Convention on the Rights of the Child. An entry clearance decision for the admission of a child under 18 is "an action concerning children...undertaken by…administrative authorities" and so by Article 3 "the best interests of the child shall be a primary consideration".*
>
> *Although the statutory duty under s.55 UK Borders Act 2009 only applies to children within the UK, the broader duty doubtless explains why the Secretary of State's IDI invites Entry Clearance Officers to consider the statutory guidance issued under s.55.*
>
> *Family considerations require an evaluation of the child's welfare including emotional needs. 'Other considerations' come in to play where there are other aspects of a child's life that are serious and compelling for example where an applicant is living in an unacceptable social and economic environment. The focus needs to be on the circumstances of the child in the*

light of his or her age, social backgrounds and developmental history and will involve inquiry as to whether:-

a) there is evidence of neglect or abuse;

b) there are unmet needs that should be catered for;

c) there are stable arrangements for the child's physical care;

The assessment involves consideration as to whether the combination of circumstances are sufficiently serious and compelling to require admission."

25. The approach to the high threshold required to be met together with the remaining guidance (summarised in the headnote above) as to para 297(i)(f), applies with equal force to para 301(i)(c).

Factual findings

26. I heard live evidence from two witnesses, A's mother and father. Having had the opportunity to cross-examine them, Mrs Pettersen acknowledged that they provided credible evidence. I entirely agree. Their own evidence is consistent with documentary evidence. Their evidence has been found to be credible by the 2017 FTT and the 2019 FTT. The reasoning provided by the 2017 FTT is detailed and cogent. Mrs Pettersen accepted that there is no reason to go behind the 2017 FTT's findings. As to the up to date evidence, I accept the evidence before me in its entirety. I have already set that evidence out at [11], [12] and [16] above. I refer to that evidence in more detail below when applying the relevant test below.

Discussion

General approach to para 301 of the Immigration Rules

27. Mrs Pettersen confirmed that there is a single issue in dispute, which turns on the application of the high test in para 301(i)(c). For the sake of completeness, Mrs Pettersen accepted that: para 301(i)(a) does not apply because both parents are here; 301(i)(b) does not apply because both parents have been responsible for A; 301(i)(c) applies because at least one parent (but in this case both parents) have been given limited leave to remain in the UK with a view to settlement. As observed in Buydov v ECO, Moscow [2012] EWCA Civ 1739 at [13], the condition of sole responsibility exists only where there is but a single sponsoring parent in the UK whom the applicant seeks to join. The scheme of para 301 is to treat differently applications to join one parent and applications to join both parents. If the application is to join both parents, there is no investigation required of responsibility for upbringing. In effect, the rules assume that between them they have full responsibility.

28. Mrs Pettersen conceded that A's parents have been given leave to remain "with a view to settlement" and "suitable arrangements have been made for the child's care" for the purposes of para 301(i)(c), and the remaining requirements

of para 301 are met. It follows that I only need consider whether there are "serious and compelling considerations rendering the exclusion of the child undesirable", which I now turn to.

Serious and compelling considerations rendering the exclusion of A undesirable

29. This is not a case in which there was a forced separation between A and his parents; they chose to leave Nigeria when they each did, without him. I accept that they have been making attempts to reunite with him but this has not been consistent. However, the family situation in the UK has not been easy or straightforward, given the special education needs and medical conditions of B and P.

30. I bear in mind that A's parents have the means to visit him in Nigeria and have done so in the past. The prospects of such visits in the immediate future are unclear, in the light of the pandemic. In any event I agree with A's parents that although he is relatively safe and secure in his accommodation in Nigeria, he is in immediate need of day to day parenting and care in the context of a family environment. He is still 15 (albeit he will soon turn 16). Significantly, A has had to deal with many challenges in his young life and continues to do so: he was left in Nigeria as a young child when his parents came to the UK; he relocated to South Africa, where he was desperately unhappy and bullied for a sustained period; within a relatively short time of returning to Nigeria, the family he lived with were making plans to emigrate to Nigeria; that family emigrated to Nigeria in late March leaving him in their home with 'the house help' but without any other family member or person able to provide him with the requisite basic parental care a child his age needs.

31. I entirely accept that A's particular history when combined with his particular circumstances render him a vulnerable child. I accept his own evidence that he feels sad, desperate, lonely and frustrated. He has articulated his feelings in a heartfelt and compelling manner in his letter dated 22 March 2020. Here he explains that when his family visited him in Nigeria in 2018, his parents boosted his confidence and made him feel much better after many years of bullying and not valuing himself. He described their departure as "*very painful*". I have no doubt that his pain and suffering has increased since the departure of his aunt's family combined with the closure of his school as a result of the pandemic. The school was concerned about A and made this clear in their letters. A was doing well at school but underperforming. The school was however more concerned about A's emotional needs than his academic achievement. A was receiving support and counselling at school and that has ceased for many months now. As A said in his letter, he needs his family "*now more than ever*".

32. There is ample and cogent evidence that reuniting A with his parents would be in his best interests. As a starting point, the best interests of a child are usually best served by being with both parents. The best interests in family

reunification in this case acquire a particular force on the facts, taking account of the emotional difficulties encountered by A over the course of many years and at present.

33. There are serious and compelling reasons, from the appellant's point of view, for him to be provided with urgent parental care and support. Mrs Pettersen has conceded that a family reunion could not reasonably take place in Nigeria, in the light of the family's circumstances. I entirely accept the parents' evidence that A's grandmother is simply too unwell to look after A. When outlining her circumstances in Nigeria, A's mother provided a straightforward account – she is clearly very worried about her mother's failing health and the risks she faces as a result of the pandemic. A has no one to care for him – as he said 'the house help' is only 18 and there to look after the home. I am satisfied that there is no one available in Nigeria to provide A with the parental care and support he urgently needs.

34. Mrs Pettersen submitted that A was safely accommodated in a home with 'the house help' and this did not give rise to serious and compelling circumstances. I accept that A is physically safe and has suitable accommodation to live in. He is also financially supported by his parents who also pay his school fees. There is no current evidence of neglect or abuse but A has been the victim of sustained bullying in the past, and importantly, currently has serious and compelling unmet emotional needs which require pro-active parental care and love.

35. A and his parents strongly desire reunification in the UK. That is not enough to meet the requisite high threshold. In this particular case there are serious persuasive and powerful considerations present. A has an overwhelming emotional need for parental care and attention. His parents have clearly been responsible for him, albeit from a distance for many years but the day to day parenting responsibilities have fallen on other family members in Nigeria and South Africa. That state of affairs changed fundamentally when the aunt's family emigrated in March this year, leaving A without any de facto day to day parental support for the first time. He has suffered and continues to suffer emotionally as a result. His age, history, and current circumstances mean that his emotional needs are high. Yet there is no one in Nigeria available to meet those needs.

36. Having had regard to all of the evidence I am satisfied that it would be in the best interests of A to be reunited with his family in the UK, and further to that finding, that there are serious and compelling considerations rendering the exclusion of A from the UK undesirable. I make that finding on the basis of the evidence available to me as at the date of hearing. That means that as at the date of hearing, A meets all the requirements of para 301 of the Immigration Rules.

Article 8

37. Mrs Pettersen accepted that success under para 301 would be determinative and the appeal would have to be allowed on human rights grounds.

38. For the avoidance of doubt, I record the agreement between the parties, and my acceptance, that there is a family life between A and his UK-based family members. There is here both emotional and financial dependency such that there is a 'family life'. I am further satisfied that the decision to refuse entry clearance demonstrates a lack of respect for that family life such that Article 8 is engaged. The only question is whether that lack of respect is on the facts, and having regard to the need for immigration control, justified.

39. I must have regard to those factors set out at Part 5A of the Nationality, Immigration and Asylum Act 2002. The Act mandates that the maintenance of immigration control is in the public interest. I note the adverse aspects of A's parents' immigration history. Notwithstanding this, they were successful before the 2017 FTT and the family were given leave to remain after this. In this context I also note my own finding that A has succeeded in demonstrating that he qualified for leave to enter under para 301 of the Immigration Rules. For the reasons outlined above, I find that the refusal of entry clearance to A would lead to unjustifiably harsh consequences for him. It is further in the public interest, and in the interests of the economic well-being of the UK, that A is financially independent, because such persons are less of a burden on taxpayers, and are better able to integrate into society. A is likely to have recourse to state education but his parents are financially independent and working hard as key workers for children in need in the UK. A will be adequately maintained and accommodated by his parents. A clearly speaks and write English with proficiency.

40. In all the circumstances, I find the decision to refuse entry clearance is disproportionate and a breach of Article 8 of the ECHR.

Decision

41. The decision in the appeal is remade as follows: the appeal is allowed on human rights grounds.

Signed: *UTJ Plimmer* Dated:
Upper Tribunal Judge Plimmer 16 July 2020