IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001250
First-tier Tribunal No: HU/50903/2020
IA/02182/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

TONYE RIDLY GENTLE JUMBO
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C Amgbah of UK Law Associates
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 25 July 2023

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Higgins promulgated on 28/06/2021 which dismissed the Appellants' appeals on all grounds.

Background

3. The appellant is a Nigerian national who was born on 03/07/1978. On 14/05/2020 the appellant applied for leave to remain in the UK as the partner of a Zimbabwean national with limited leave to remain in the UK.

4. On 22/11/2020 the Respondent refused the Appellant's application.

The Judge's Decision

5. The Appellants appealed to the First-tier Tribunal. First-tier Tribunal Judge Higgins ("the Judge") dismissed the appeal against the Respondent's decision.

6. Grounds of appeal were lodged and on 16/11/2021 First-tier Tribunal Judge Neville gave permission to appeal stating,

> 1. The grounds in support of the (in time) application can be distilled into three asserted errors of law: first, that the Judge incorrectly noted oral evidence such as to undermine his findings of fact; second, that the Judge erred in his approach to finding whether a relationship is "parental"; third, that the Judge overlooked relevant medical evidence.
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> 2. The third ground is arguably correct: at [17] the Judge describes the appellant and his partner as "relatively healthy adults", but para 30 of the skeleton argument and para 9 of the appellant's statement squarely raise serious health problems as contributing to insurmountable obstacles, with supporting cardiological evidence. I do wonder at the materiality of that omission, but it cannot be said (at permission stage, at least) that the same outcome was inevitable.
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> 3. The first ground, also concerning evidence being overlooked, is therefore strengthened by the third. It is nonetheless a matter of concern that there is no advocates note or witness statement provided or (more fundamentally) use of the "request a transcript" service on gov.uk – the hearing would have been recorded. I make no directions, but the appellant's representatives are put on notice of this deficiency in their presentation of the appeal. While the second ground is not arguable insofar as it concerns the correctness of approach, that approach would not be undermined if the evidence had indeed been misunderstood. I do not restrict the scope of permission.

The Hearing

7. For the appellant, Mr Amgbah moved the grounds of appeal. He said that the Judge failed to take account of medical evidence which was relevant to the question of whether or not there are insurmountable obstacles to family life continuing outwith the UK. He said that no consideration is given to EX.1 of the Immigration Rules by the Judge, even though this is a crucial part of the appellant's case. He referred me to the grant of permission to appeal and reiterated that no consideration was given to the medical evidence and no consideration was given to insurmountable obstacles to the continuation of family life.

8. For the respondent, Mr Wain told me that there are no errors, material or otherwise, contained in the Judge's decision. He said that at [5] of the decision there is a summary of the appellant's case and an outline of the family's living situation. Between [11] and [13] the Judge considers the nature of the family relationships and what would face the appellant on return to either Nigeria or Zimbabwe.

9. Mr Wain took me to [13] of the decision and told me that the Judge was correct to place little weight on the relationships formed, and also correct to find that there is no parental relationship between the appellant and his partner's two children because those two children remain with their own father. He told me that the Judge had considered the facts and circumstances of this case in a real-world context and applied the correct legal test.

10. Mr Amgbah, in reply, emphasised that this appeal is not argued under paragraph EX.1 of the rules, but argued that the Judge's overall article 8 proportionality balancing exercise was flawed because (he said) the exceptional circumstances in this case were overlooked and the relationships between the appellant and his partner's children were incorrectly interpreted.

Analysis

11. Between the [3] and [10] of the decision, the Judge summarises the evidence that he heard. The Judge's findings and reasons are found between [11] and [19] of the decision.

12. At [11] the Judge clearly explains why he finds that there is no parental relationship between the appellant and his partner's two teenage sons. Those two teenage boys live with their own father in a separate town in England. On the evidence available to the Judge, finding that the affection that the appellant's partner's children have for the appellant does not create a parental relationship is a finding well within the range of reasonable conclusions available to the Judge.

13. At [13] the Judge engages with the question of the reasonableness of requiring any of the appellant's partners three older children to leave the UK and gives good reasons for finding that it would be unreasonable to expect them to leave the UK, but that that finding carries little weight.

14. Between [15] and [17] the Judge explains why he finds that there are no insurmountable obstacles to family life between the appellant's partner and their young daughter continuing outside the UK.

15. There is no material error of law, to be found in the contents of the decision. Permission to appeal was granted on the basis that the Judge incorrectly noted evidence, and failed to take account of medical evidence. The substance of two of the grounds of appeal is an argument about omissions from the Judge's decision.

16. When granting permission to appeal FTTJ Neville put the appellant's representatives on notice that the failure to produce a witness statement, or an advocates note , or a transcript of the evidence was a deficiency in the presentation of the appeal. The deficiency has not been addressed.

17. In the grant of permission to appeal, reference is made to paragraph 30 of the appellant's skeleton argument and paragraph 9 of the appellant's witness statement. Those two sections of the appellant's pleadings are in contrast to the Judge's finding that the appellant and his partner are "relatively healthy adults".

18. Paragraph 30 of the skeleton argument simply records that the appellant has suffered from high blood pressure and a heart condition, and says that the standard of NHS care available in the UK is better than healthcare available in Nigeria. Paragraph 9 of the appellant's witness statement reiterates the same considerations in the appellant's own words.

19. The appellant's bundle contains extracts from the appellant's partner's medical records, together with prescription slips for the appellant, with letters from the medical teams treating the appellant, and the appellant's GP records.

20. The was no evidence explaining what was to be taken from the medical documents produced place before the First-tier Tribunal. There was no reliable evidence of the availability of necessary medical treatment in Nigeria or the effect of withdrawal of NHS services on the appellant. It is not an error of law for the Judge to treat unexplained documentary evidence as evidentially neutral. It is likely to be an error of law for the Judge to try to interpret GP records and draw his own medical conclusion from those records.

21. In Latta 2023 UKUT 00163 it was held that

> *4. It is a misconception that it is sufficient for a party to be silent upon, or not make an express consideration as to, an issue for a burden to then be placed upon a judge to consider all potential issues that may favourably arise, even if not expressly relied upon. The reformed appeal procedures that now operate in the First-tier Tribunal have been established to ensure that a judge is not required to trawl though the papers to identify what issues are to be addressed. The task of a judge is to deal with the issues that the parties have identified.*
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> *6. The application of anxious scrutiny is not an excuse for the failure of a party to identify those issues which are the principal controversial issues in the case.*
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> *7. Unless a point was one which was Robinson obvious, a judge's decision cannot be alleged to contain an error of law on the basis that a judge failed to take account of a point that was never raised for their consideration as an*

issue in an appeal. Such an approach would undermine the principles clearly laid out in the Procedure Rules.

22. Despite clear notice that the allegations of failure to take account of evidence were unsupported, and what is pled in the grounds of appeal is deficient, neither a witness statement, nor an advocates note, nor a transcript of the evidence is produced to support this appeal. If the appellant hoped to establish an error of law by omission, the appellant would have to demonstrate that evidence was produced before the Judge, and either ignored, misinterpreted, or omitted from the decision. The appellant has not done that.

23. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

24. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all of the evidence. There is nothing unfair in the procedure adopted nor in the manner in which the evidence was considered. There is no challenge to the Judge's fact-finding exercise. The respondent might not like the conclusion that the Judge arrived at, but the correct test in law has been applied. The decision does not contain a material error of law.

25. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

26. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 28 June 2021, stands.

Signed Paul Doyle
Date 31 July 2023
Deputy Upper Tribunal Judge Doyle

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.