Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06054/2017

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 29 January 2020	**On 27 February 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MORRIS [L]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussain instructed by Hussain Immigration Law Ltd.
For the Respondent: Mr Diwncyz Senior Home Office Presenting Officer.

DECISION AND REASONS

1. On 11 December 2019 the Upper Tribunal found a judge of the First-Tier Tribunal had made an error of law, such that the earlier decision was set aside, because the Judge failed to consider whether the deportation order made against the above appellant should be revoked; which required consideration of paragraph 390 of the Immigration Rules.

2. A specific direction was given that the findings and reasons for dismissal of the appellant's protection appeal shall be preserved. As the original appeal was on protection and human rights grounds it is only the human rights element that is now at large.

Discussion

3. The appellant claimed to be a male citizen of Zimbabwe born on 14 September 1980 who faced a real risk of persecution on return to that country. The First-tier Judge records at [42]:

> 42. The author of the Evidential Report took into account that the Appellant had falsely claimed to be [STD], a Nigerian national, to the UK authorities in 2012, he had a number of close friends in the UK who were of Nigerian ethnicity and that the Zimbabwe authorities had concluded that the Appellant was not the Zimbabwe national (HOB at V3). The report concluded that the Appellant is, in fact, a Nigerian national. I accept this finding.

4. It is a preserved finding that the appellant is not a citizen of Zimbabwe but a citizen of Nigeria.
5. At [58] the First-Tier Tribunal wrote:

> 58. The Appellant accepts that he has no valid claim under the Refugee Convention and Articles 2 and 3 of the Human Rights Convention stand or fall together.

6. The First-Tier Tribunal also found the appellant had failed to show there are no adequate medical facilities available to him on return to Nigeria.
7. The appellant is the subject of an order for his deportation following his conviction on 15 October 2009 at Glasgow Sheriff Court of possessing a false identity document and attempting to pervert the course of justice for which he was sentenced to 12 months imprisonment. The appellant did not appeal against conviction or sentence. Over 10 years have passed since the appellant's conviction.
8. In relation to representations made in support of revocation, Mr Diwncyz on behalf of the Secretary of State relied upon the reasons for refusal letter and submitted that it was for Mr Hussain to establish whether the appellant had a subsisting relationship, accepting that if such a relationship was made out that the appellant's deportation would not be proportionate.
9. The appellant's case is that if he were to be deported to Nigeria this would extinguish the family life he enjoys with his wife and child with whom he resides in a family unit.
10. It is accepted the appellants British partner and British national child will not leave the United Kingdom meaning this is a family splitting case.
11. Paragraph 399 of the Immigration Rules applies where paragraphs 389 (b) or (c) applies if a person has a genuine and subsisting parental relationship with a child who is under the age of 18 years and who is

in the UK and the child is a British citizen or has lived in the UK continuously for at least 7 years and it will be unduly harsh for the child to live in the country to which the person is to be deported or it will be unduly harsh for the child to remain in the UK without the person to be deported, or the person has a genuine and subsisting relationship with a partner who is in the UK and is a British citizen or settled in the UK and the relationship was formed time when the person was in the UK lawfully and their immigration status was not precarious and it will be unduly harsh for the partner to live in the country to which the person was to be deported because of compelling circumstances over and above those described in paragraph EX.2 of Appendix FM and it will be unduly harsh for the partner to remain in the UK without the person to be deported.

12. It was not disputed the appellant is the biological father of his son born on the 9 March 2019.

13. The appellant's relationship with his partner began in 2017. They had been friends from 2012. Both the partner and their child are British nationals. The appellant states he and his partner have lived together since September 2019. He was not allowed to live with her during his initial appeal but has informed the authorities of his current position. The appellant states he supports his partner by looking after their son when she goes to work and on ordinary days and nights, by bathing, feeding, dressing, nappy changing, playing, reading books and taking their son out for walks, which the appellant claims has formed a very strong bond between them. The appellant claims that when his partner was recently ill he cared for both her and the child.

14. The evidence from the appellant's partner is that they have a child together and that they share a very close bond as a family. The appellant's partner states the appellant is a dedicated family man who has shown progress in trying to get his life back on track and who would be more stable if he was given freedom to be able to provide for his family like other family men. The witness confirms she and the appellant have lived together since September 2019. The appellant's partner works early, late, and night shifts depending on what is available and receives support both for herself and her son from the appellant who, in addition to the role he has for their son, helps out with daily household chores as well as calming their son down at night.

15. The appellant's partner states that if the appellant was not around she will struggle with childcare and their quality-of-life, and especially that of their son, will be affected and she will not be able to go out to work as she normally does. The appellant's partner claims that their son and the appellant have a very strong bond and that he will be devastated if that bond is broken.

16. The appellant's partner was subject to cross-examination and re-examination particularly concerning the nature and availability of shift work in response to which she confirmed she takes the work that is available which can require very early starts and late finishes. I find

having assessed the appellant's partner's evidence that she is a credible witness.

17. There is clear evidence that the appellant has a genuine and subsisting parental relationship with his son who is under the age of 18, in the UK, and who is a British citizen. It is not suggested it is appropriate for the child to live in Nigeria leaving the issue of whether it be unduly harsh for the child to remain in the United Kingdom without the appellant.

18. It is also accepted on the evidence the appellant has a genuine and subsisting relationship with his partner who is in the United Kingdom and who is a British citizen. The relationship was formed in 2017 during the time the appellant status in the United Kingdom was precarious.

19. When assessing whether the consequences the appellant's removal upon the child will be unduly harsh it is necessary to weigh all relevant factors in the round. . The Supreme Court in KO (Nigeria) v SSHD [2018] UKSC 53 held that when looking at unduly harsh the focus was only on the position of the child. To take into account the conduct of the parent would be in direct conflict with the Zoumbas principle that the child should not be held responsible for the conduct of the parent.

20. In Hesham Ali (Iraq) v SSHD [2016] UKSC 60 it was found the Rules relating to revocation of a deportation order are not a complete code. In that case, on a deport appeal, a Lord Reed at paragraphs 47 to 50 endorsed the structured approach to proportionality and said "what has now become the established method of analysis can therefore continue to be followed in this context.....The critical issue for the tribunal will generally be whether, giving due weight to the strength of the public interest in the deportation of the offender in the case before it, the article 8 claim is sufficiently strong to outweigh it. In general, only a claim which is very strong indeed - very compelling, as it was put in MF (Nigeria) - will succeed".

21. It is accepted that there was no presumption in favour of or against revoking a deportation order which depended on the precise circumstances of the case.

22. Whilst the appellant has not yet been removed from the United Kingdom there is no statutory bar to the order to the deportation being revoked.

23. The order has been in force for a considerable period of time and the issue in this appeal is the proportionality of whether the order should continue or not. The appellant has not offended since the index offence and although there is a strong public interest in a robust and effective deportation system the strongest point in the appellant's favour is the acceptance by Mr Diwncyz that if the appellant established a genuine and subsisting relationship with his child his removal will be disproportionate. This can only be based upon assessment of the impact of the appellant's deportation and conclusion that the same will be unduly harsh in all the circumstances by a very experienced Senior Presenting Officer. In light of it being accepted the appellant has establish such genuine and subsisting

relationship and in light of the respondent's view of the weight that should be given to the balancing exercise in light of this factor, I find this appeal shall be allowed on Article 8 ECHR grounds and the order for the appellant's deportation set aside.

Decision

24. **I remake the decision as follows. This appeal is allowed.**

Anonymity.

25. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 24 February 2020