

**Upper Tribunal  
(Immigration and Asylum  
Chamber)  
Appeal Number:  
IA/25075/2015**



**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 21<sup>st</sup> June 2017**

**Decision &  
Promulgated  
On 24<sup>th</sup> July 2017**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY**

**Between**

**USMAN JAVED**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Ogunbasola, Counsel for M-R Solicitors, London

For the Respondent: Mr Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan. He states that his date of birth is 8<sup>th</sup> July 1987. He appealed against the decision of the Respondent dated 26<sup>th</sup> June 2015 refusing his application under Article 8 of ECHR on human rights grounds. The appeal was heard by Judge of the First-tier Tribunal Lawrence on 13<sup>th</sup> October 2016. The appeal was dismissed in a decision promulgated on 16<sup>th</sup> November 2016.
2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Lever on 8<sup>th</sup> May 2017. The permission states that the judge acknowledged that the Appellant's case wholly concerns his relationship with his child. There were papers on file from the Medway Family Court. He deals with these at paragraphs 3, 5 and 6 noting that it is stated in these documents that no permission has been granted by the Family Court to disclose the documents to the IAC. The judge found that the Appellant's representative had had sufficient opportunity for permission to be sought from the Family Court but he did

not deal with this so the judge refused an adjournment and decided the case without addressing any evidence concerning the Appellant's alleged contact with the child. This was in spite of the fact that the Appellant gave oral evidence about his contact at the hearing. The permission states that given that the relationship with the child is central to the case it is arguable that this is an error of law. The permission states that the failures were unlikely to be the fault of the Appellant.

3. There is no Rule 24 response.

### **The Hearing**

4. A supplementary bundle was submitted by the Appellant's representative. In this bundle there is a document from Lifelines Contact Centre in Maidstone dealing with ongoing contact between the Appellant and his child. The documents in this bundle were available at the First-tier hearing.
5. The Appellant's representative submitted that there was evidence before the First-tier Judge of contact between the Appellant and his child apart from the Medway Family Court documents. He submitted that the judge did not consider this evidence or the Appellant's oral evidence about this, which was given at the hearing.
6. He referred to paragraph 5 of the decision submitting that it is a central error in this claim for the judge to fail to deal with evidence before him.
7. He submitted that the Appellant's claim should be allowed under Rule E-LTRPT.2.4. He has provided evidence about access rights and he submitted that relating to E-LTRPT2.4(b) the claim should succeed as sufficient evidence of the Appellant's access rights was provided.
8. The representative submitted that the Appellant clearly engages with his child. I was referred to the bank statements on file which show receipts for money paid to his ex-partner for the child and payments to the child. He submitted that E-LTRPT.3.1 has been satisfied as the Appellant did not come to the United Kingdom as a visitor or with valid leave for six months or less. He had eighteen months' leave when he came to the country. He submitted that the judge did not properly consider the evidence and this is an error of law.
9. I asked about the deception which the Appellant is accused of, relating to his English test in his student application. I was referred to paragraph 11 of the decision in which the judge states that he is unable to visit the deception issue as there was no evidence about this before him.
10. The Presenting Officer accepted that there is an error of law in the judge's decision as he did not consider any of the evidence before him relating to the Appellant's relationship with his child.
11. There was agreement between the parties that there is an error of law in the First-tier Tribunal Judge's decision and having considered the material

before me I find that that is the case. The judge should have considered the evidence before him relating to the relationship between the Appellant and his child as there was relevant evidence before him other than the Medway Family Court documents. It is true that the Appellant's representative had been given time to deal with this and had not done so and that is why an adjournment was not granted but based on what was before the First-tier Judge I find that there is a material error of law in the First-tier decision and the First-tier Tribunal Judge's decision, promulgated on 16<sup>th</sup> November 2016 must be set aside.

12. I direct that this appeal is remitted to the First-tier Tribunal for a hearing de novo. It should not be heard by Judge Lawrence.
13. No anonymity direction is made.

Signed

Date 21/07/2017

Deputy Upper Tribunal Judge I A M Murray