



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/18511/2016

THE IMMIGRATION ACTS

Heard at Field House
On 5th September 2018

Decision & Reasons Promulgated
On 14th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

M S R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Chowdhury, Solicitor; Kingdom Solicitors

For the Respondent: Ms J Isherwood, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Cockerill promulgated on 12th January 2018 dismissing the Appellant's appeal against an application premised upon his human rights. The Appellant appealed against that decision and was granted permission to appeal by First-tier Tribunal Judge Boyes in the following terms:

"The grounds assert that the judge erred by not considering a valid and raised ground of appeal. Permission is granted. If the matter was raised and not dealt

with then that could amount to an error. Permission is granted on all grounds so as not to tie the hands of the UT.”

2. I was provided with a Rule 24 response from the Respondent which was read by all parties before the hearing commenced.

Error of Law

3. At the close of the hearing I indicated I found there was a material error of law in the decision such that it should be set aside but that my reasons would follow. My reasons for so finding are as follows.
4. In respect of the chief ground of complaint it is that the First-tier Tribunal failed to issue a decision upon whether the Appellant could benefit from paragraph 248A of the Immigration Rules, that paragraph pertaining to “the requirements to be met by a person seeking leave to remain in the United Kingdom to exercise access rights to a child resident in the United Kingdom.” The grounds complain that a skeleton argument was placed before the First-tier Tribunal which contained reference to this Immigration Rule, upon which the Appellant relied. I have seen a copy of the Appellant’s bundle before the First-tier Tribunal and it does indeed contain a skeleton argument at pages 1 to 10. In that document at paragraph 31A there is a recitation of paragraph 248A of the Immigration Rules and it is true to say that the Appellant did rely squarely upon this Rule, as Ms Isherwood also accepted on behalf of the Respondent. In terms of the materiality of the reliance upon that Rule, I asked Mr Chowdhury to take me through the various subparagraphs of paragraph 248A of the Immigration Rules to demonstrate that there was at least arguably some purchase to be had in terms of it being dealt with at a further hearing. I will not rehearse all of the evidence that Mr Chowdhury has taken me through, suffice to say that there was reference to evidence which could demonstrate that the rule could be met. For example, in the supplementary bundle at pages 1 to 6, a statement from the Appellant’s estranged wife, Mrs [S B], demonstrates that contact is ongoing between the Appellant and his child and that there is also financial support provided by the Appellant to his children via his brother-in-law (perhaps I should say his former brother-in-law, although the marriage is still formally in existence). Mr Chowdhury also took me to photographs at pages 79 to 87 of the main bundle and receipts for gifts given to his children at pages 20 to 39 (which also includes receipts for groceries which refer to common household items needed for childcare) and demonstrates ongoing care and support for the children. Those pages also show copies of train tickets from Shrewsbury to London on a regular basis which demonstrate the travel of the Appellant to London, for purposes it is said of visiting his children. Thus it may be seen that there are arguably regular visits or stays with the children in London. I do not make any finding as to whether the visits are ‘frequent’ or not as that is a matter for the First-tier Tribunal but I do observe that it is at least arguably so, and this contact should in any event be seen in the context of the decaying relationship between the Appellant and his spouse (upon Mr Chowdhury’s instructions). In terms of the remaining paragraphs it is true that the Appellant has limited leave to remain in the United Kingdom as the spouse of a settled person and he has not remained in breach

of any immigration laws and I have not been shown any indication that there is reason to doubt his accommodation and ability to maintain himself. Consequently, I do see that there is a material error in the judge's omission to consider paragraph 248A and moreover I also note that the judge in reaching his findings at paragraph 40 has failed to engage with the witness statement from the Appellant's estranged spouse (notwithstanding that mention was made of the statement earlier in the decision at paragraph 18).

5. I also note that at paragraph 41 of the decision, the First-tier Tribunal Judge has assessed the relationship based on the traditional scenario of the Appellant being in a 'family unit' with his spouse and children (although I do not entirely lay the blame at the First-tier Tribunal Judge's door for this, given that the presentation of the evidence for the First-tier Tribunal seems to be somewhat misguided, in that it emanated later, in the hearing before the First-tier Tribunal that the Appellant was estranged from his spouse). Notwithstanding that approach, even if the Appellant is not residing with his spouse and two children in the traditional scenario of a 'family unit', family life can of course exist at a distance and, on the evidence before the First-tier Tribunal Judge, there is no reasoned finding as to whether family life did or did not exist at a distance.
6. In light of the above findings, I set aside the decision of the First-tier Tribunal in its entirety. The appeal is to be remitted to be heard by a differently constituted bench.

Directions

7. Standard directions are to be issued.
8. I make the further following directions to assist the First-tier Tribunal in the listing of this appeal.
9. A Bengali (Sylheti) interpreter is to be provided. It is said by Mr Chowdhury that only the Appellant is to give evidence at the remitted hearing before the First-tier Tribunal.
10. The time estimate given is two hours.
11. For the sake of completeness, I make an anonymity direction in standard terms given that this decision concerns children and will be published online.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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.

Signed
Deputy Upper Tribunal Judge Saini

Date 11 September 2018