



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/20309/2018

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Centre
On 5th November 2019**

**Decision & Reasons
Promulgated
On 20th November 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE KING TD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

EMMANUEL [B]

Appellant

Claimant/Respondent

Representation:

For the Appellant: Ms H Aboni, Home Office Presenting Officer

For the Claimant/Respondent: Mr J Adebayo, Legal Representative of Syeds
Law Care Solicitors

DECISION AND REASONS

1. The claimant is a citizen of Ghana born on 23rd December 1972. On 2nd July 2018 he applied for leave to remain under the Immigration Rules and/or Article 8 on the basis of his family life with his partner [BA], a citizen of Ghana. On 2nd July 2018 his solicitors wrote to the Secretary of

State for the Home Department with a Statement of Additional Grounds on the basis of his relationship with his partner's child, who it is said is a British citizen aged 2 and who is referred to in the correspondence as IOJ.

2. The application met with a refusal on 28th September 2018 on the basis that the claimant was an overstayer having been encountered as such on 29th May 2018. It is not accepted that he had been in a relationship for the claimed time nor that that relationship was genuine or subsisting. It was not found that there were any exceptional circumstances which would not permit family life to be continued in Ghana. Consideration was also given to GEN 3.2 of Appendix FM. No compassionate factors were found.
3. The claimant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Shore on 25th February 2019. Both he and his partner gave evidence before the Tribunal and a bundle of documents some 21 folios was presented.
4. The partner already had a child born on 11th February 2017, that being IOJ. The father of that child was [OC] born in Portugal. It was the evidence of Ms [A] that she had had nothing to do with him since or indeed prior to the birth but essentially it was the claimant who had assumed parental responsibility for her. It was claimed that that child was a British national child and a photocopy of a passport was presented. Subsequently both the claimant and his partner had a further child born on 25th January 2019 and a birth certificate was produced.
5. It was the case as presented by the claimant to the Judge that he had lived with his partner for more than two years, that he is the main carer of IOJ whilst her mother is at work. He said that IOJ's natural father did not see her and that he had met him only once.
6. Ms [A] gave evidence briefly to say that she was currently making an application to formalise her immigration status and that IOJ's natural father played no part in her or her daughter's life.
7. The Judge accepted the credibility of what was said and made findings accordingly. The Judge found that IOJ was a qualified child and considered that it would not be reasonable to expect the child to leave the United Kingdom and therefore in all the circumstances and applying Section 117B(6) that the appeal should be allowed.
8. The Secretary of State seeks with permission to challenge that decision on the basis that deception had been practised and that material circumstances had not been disclosed by the parties, which would have been material to a proper and fair outcome of the hearing.
9. Permission to challenge the decision was granted.

10. The difficulty, which faced the First-tier Tribunal Judge at the hearing was that there was no representative of the Secretary of State in attendance and therefore essentially the Judge was relying upon what was said by the claimant and his partner. What had been presented to the Judge in substance was that the natural father of IOJ effectively had nothing to do with his daughter or indeed with Ms [A] since the birth of the child on 11th February 2017.
11. Further it was the clear suggestion that for two years prior to the hearing the relationship as between the claimant and Ms [A] had been firmly established.
12. What appeared, however, from the enquiries was that Ms [A] was in the process of bringing an appeal before the First-tier Tribunal against the decision of the Secretary of State for the Home Department of 16th March 2018. That appeal EA/02678/2018 is before the First-tier Tribunal and is being actively pursued by Ms [A] with a hearing date in February 2020.
13. Such an appeal was based upon an application made on 2nd September 2017 for permanent residence as the direct family member of an EEA national namely [OC]. Reliance was placed upon the marriage certificate. It was contended that the marriage between Ms [A] and Mr [C] was both genuine and subsisting and that she fell to be granted the residence card. Both Mr [C] and Ms [A] were called for interview on 8th January 2018 at the Home Office in Liverpool and attended. The refusal decision sets out very fully the questions that were asked and the answers which were given. This was at a time when the claimant and Ms [A] were telling the Tribunal that they are in a committed relationship, whereas she is presenting to the Home Office in the interview that she is in a subsisting and genuine relationship with another. It was put forward at that interview that she and Mr [C] were living apart due to work commitments and although they were separated they were trying to fix the relationship. Mr [C] indicated that he worked in Yarmouth and visits his wife and child weekly at the matrimonial home. Ms [A] indicated that they were going back to Wolverhampton where she lives and spoke of the various visits to her and the child that Mr [C] has made. It is unnecessary to delve into any detail in the refusal decision as it analyses the replies that were made by both as to pregnancy, birth of the child, when the sponsor sees the child, the name of the child, the proxy marriage and so-forth.
14. It was the reasoned conclusion at the end of the interview that there were so many discrepancies that both parties were unreliable and that the relationship was not as claimed but was a bogus or a relationship designed to mislead the immigration authorities.
15. In terms of the answers given by Mr [C] to the marriage certificate, such led the decisionmaker to the conclusion that there had been no valid marriage at all.

16. Thus the application made by Ms [A] was refused and is significantly the subject of her continuing appeal. It is not entirely clear on what basis she seeks to maintain the truthfulness of her answers in interview of 8th January 2018 but it is entirely clear that in her application, she was seeking to mislead the authorities as to the reality of her relationship with Mr [C]. Such calls into mind fundamentally her credibility and her honesty. As I have indicated she was presenting with the claimant to the First-tier Tribunal Judge that they are in a committed relationship and yet she is seeking to present to a different Tribunal that, at the same time, she was in a committed relationship with another such as to constitute a proper ground to be granted permanent residence. The application was not to claim preserved rights from a previous relationship but rather presenting that that relationship was as of 2nd September 2018 continuing and in existence.
17. Were it indeed to be found that the sponsor and partner of the Claimant and Mr [C] had entered into a false marriage or no marriage at all in order to deceive the authorities as to her immigration status, such would have a number of consequences in the consideration of the evidence that has been presented on behalf of the claimant in this case. Poor copies and incomplete copies of the reported divorce from Mr [C] have been presented as set out on pages 12 to 14 of the claimant's bundle. It purports to show a divorce of the 13th day of October 2018. The genuineness of that document clearly is called into question, if indeed the genuineness of the original marriage certificate as presented to the immigration authorities was bogus or misleading.
18. Indeed if Ms [A] and Mr [C] were not married or in any realistic relationship calls into question how it is that their daughter attains British citizenship or should retain it.
19. It is submitted on behalf of the claimant that whatever may be the criticisms attached to his partner, such does not detract from the genuineness of his relationship with her and with the children. That may or may not be correct but I do not find it credible that the claimant would have been unaware of the basis upon which his partner was seeking to gain status in the United Kingdom in the way that she has. It is perhaps significant that in his own brief witness statement there is absolutely no mention of any relationship with Mr [C], notwithstanding the clear applications that were made by his partner that there were.
20. I have no hesitation in finding that the evidence as presented to the First-tier Tribunal Judge was at worst deceptive and at best misleading and incomplete so as to render any assessment as to credibility by the Judge as being fundamentally flawed. I do not suggest for one moment the Judge has fallen into error in the approach taken to credibility but that the Tribunal and the Judge had been induced to make findings upon misleading or accurate or incomplete information and that must call into question the safety of the findings that were made.

21. It is apparent that if the allegations that are made in the refusal letter are substantiated by a Tribunal, such greatly undermines the credibility of the claimant and his partner and provide important factors to be taken in consideration as to whether they should stay or leave the United Kingdom. It calls into question also what is the correct status of the daughter and of her protected rights.
22. In all the circumstances the appeal by the Secretary of State to the Upper Tribunal is allowed such that the decision is set aside to be remade by the First-tier Tribunal.
23. Clearly given the relationship between this appeal and EA/02678/2018 I direct that they should be considered by the Tribunal either together or subsequently as the First-tier Tribunal best determine.

Notice of Decision

The decision of the First-tier Tribunal is set aside to be remade. Directions for so doing to be issued by the First-tier Tribunal.

No anonymity direction is made.



Signed

Date 15 Nov 2019

Deputy Upper Tribunal Judge