Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/20570/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15th August 2019	**On 2nd September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

BARIKIEL [T]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Claire Litchfield, Counsel instructed by HM & Co Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Tanzania whose appeal was dismissed by First-tier Tribunal Judge Clark in a decision promulgated on 4th June 2019.

2. Grounds of application were lodged. It was said that the judge's findings were devoid of adequate reasoning and she had made findings which contained a cursory consideration of the facts. There was no dispute that the Appellant and his partner Miss J [D] were in a genuine and subsisting relationship. In particular the judge had erred in finding that there was no suggestion from the school that the Appellant had not been to the school on his own to drop or collect [C] from school. The judge had found Miss

[D] to be a credible witness. Miss [D] would normally leave [C] in the Appellant's care in circumstances where she had needed to care for her mother or take her for medical appointments.

3. The judge had attached weight to the Appellant's misunderstanding of [C]'s school as a "special needs" school instead of a school with a special needs provision. The judge had ignored other positive findings that demonstrated the Appellant had a genuine joint parental relationship with [C]. The judge had minimised [C]'s relationship with the Appellant to a mere attachment by reason of living together. The photographs of the Appellant and [C]'s trip to Legoland should not be easily discounted as having no effect as a testimony of the Appellant's bond with [C]. The misdirection prevented the judge from considering the Appellant's circumstances in the context of Section 117B(6) of the 2002 Act.

4. It was further submitted (Ground 2) that the judge's assessment of [C]'s best interests was confusing and erroneous in the sense that the judge accepted it would be in [C]'s best interests to remain here but went on by saying his best interests might be to relocate to Tanzania with his mother despite the fact that [C]'s father was British and had weekly contact with him.

5. Permission to appeal was granted by First-tier Tribunal Judge Parkes in a decision dated 11th June 2019.

6. Before me Ms Litchfield, Counsel for the Appellant said that the judge's findings were irrational. Reliance was placed on the grounds. The appropriate decision for me to make would be to set the decision aside and remit the matter to the First-tier Tribunal. There would be a further medical report on [C] who was being currently assessed.

7. For the Home Office Mr Tarlow said the judge's reasoning was sound enough. In paragraph 50 the judge had fully considered the possibility of Miss [D] and [C] moving to Tanzania. I was asked to uphold the decision.

8. I reserved my decision.

Conclusions

9. Section 117B(6) is important in this case as it says the public interest does not require removal of the Appellant where he has a genuine and subsisting relationship with a qualifying child. The judge found that he did not come under 117B(6) for the reasons given in paragraph 41 of her decision. In that paragraph the judge appears to give two reasons why the Appellant has failed to establish a parental relationship. The first was a letter from the school which said that the Appellant had accompanied Miss [D] to collect [C] from school on "several occasions" and he had attended two school events but he had not been at the school "lately" and there was no suggestion he had taken [C] to school and picked him up without Miss [D]. What the judge was really saying was that the letter from the school was not wholly satisfactory because of what the school did not say about the Appellant attending the school. The judge added that the Appellant had suggested that [C] went to a "special" school due to his

learning difficulties but was not the case. The judge concluded that the Appellant's misunderstanding of this did not demonstrate a close involvement or interest in [C]'s education.

10. In my view this reasoning is, as described by Ms Litchfield, irrational. It is certainly not adequate. It is not disputed that the Appellant did go to the school and had collected [C] from school on several occasions. The fact that the Appellant said [C] went to a "special school" was not technically correct because he went to a mainstream primary school which had a good reputation for its special needs provision. The fact that the Appellant had a slight misunderstanding on the nature of the school does not go anywhere near to justifying a conclusion that he had not demonstrated a close involvement or interest in [C]'s education and therefore he did not qualify under Section 117B(6). The finding also ignores the fact that the judge found Miss [D] to be a credible witness (paragraph 36 of the decision) and her evidence would support the Appellant's contention that he was in a parental relationship with [C] - see paragraph 17 of her witness statement.

11. In failing to give rational reasons for finding that the Appellant was not in a parental relationship with Miss [D]'s son [C] means that the judge's decision contains errors in law which were fundamental to the issue of whether the appeal should be dismissed or allowed. It seems to me that the decision must be set aside as it is not safe. Given that finding it is not necessary to comment on Ground 2 of the application except to say that it may well have force.

12. Unfortunately, it seems to me that further fact-finding is necessary and the matter should be remitted to the First-tier Tribunal to be heard by a judge other than Judge Clark.

13. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the appeal to the First-tier Tribunal.

No anonymity order is required.

Signed *JG Macdonald* Date 30th August 2019

Deputy Upper Tribunal Judge J G Macdonald