



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01580/2014

THE IMMIGRATION ACTS

Heard at Glasgow
On 8th May 2014

Determination Promulgated
On 13th June 2014

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR SOUHIL AGSOUS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative
For the Respondent: Mr A Mullen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Algeria born on 19th April 1971.
2. On 25th May 2012 he was granted limited leave to remain in the United Kingdom until 25th November 2012 on the basis of his continued involvement in court

proceedings regarding access to his child. On 23 November 2013 a further application for variation of leave to enter or remain was made on the same basis. On that occasion his application was refused by a decision letter dated 9th December 2013. A decision was also made to remove the appellant from the jurisdiction.

3. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Doyle on 5th February 2014. On that occasion the appellant was represented but the respondent not.
4. His claim was that he is the father of a British citizen daughter born on 5th July 2005. The appellant's relationship with the mother of the child broke down in August 2006. He raised a court action in Edinburgh Sheriff Court but in November 2011 was refused contact with his daughter. He appealed to the Court of Session, which appeal was unsuccessful. The appellant claims that his solicitors have contacted his ex-partner to open up negotiations to arrange contact to see his daughter. The appellant claims that removal would breach his right to respect for family life because he will be prevented from continuing to pursue the possibility of contact from his daughter.
5. The respondent's case was that the appellant was no longer engaged in current court proceedings and that his previous attempts to obtain contact through such proceedings had been unsuccessful. The time had come therefore for him to be removed.
6. The Judge set out the findings of fact in the determination. The appellant's daughter is aged 8½ years old but he has not seen his daughter since 2009. It has been judicially determined that it is not in the appellant's daughter's interests to have contact with the appellant.
7. On 30th January 2014 the appellant's solicitors confirmed that they continue to act for the appellant and that they have written to the appellant's former partner's solicitors seeking contact threatening further legal action. Significantly it was noted however by the Judge in the determination that family life does not exist for the appellant in the United Kingdom given the current ruling that he may not see his daughter. There are no legal or court proceedings currently being undertaken.
8. The Judge concluded that removal was proportionate and thus the appeal in respect of the Immigration Rules was dismissed as was that in relation to Article 8 of the ECHR.
9. Grounds of appeal were submitted indicating that the case for his daughter was back in court because there were material changes of circumstances.
10. Given that statement permission to appeal was granted. If contact proceedings have been reopened then that gives rise to an arguable material change of circumstances.

11. Thus the matter comes before me in pursuance of that grant of permission. The appellant attends unrepresented. Contrary to what was said in the grounds of appeal there are no outstanding court cases and the application or appeal that he wishes to make has not yet reached the status of any court proceedings.
12. The incident which gave rise to his being denied access to his daughter was the suggestion made in May 2009 that the appellant had sexually assaulted his daughter. That is why the contact was refused and why the courts have upheld that refusal.
13. The appellant spoke at length concerning his disagreement with certain of findings of the court and in particular his concerns at certain documentation or reports written in his favour which were not fully taken into account by the Sheriff's court or by the Court of Session.
14. He is not in a financial position to finance any further appeal and would be relying upon funds from his friends to do so. He asked however that he might be given permission to stay longer in the United Kingdom in order to raise the funds in order to institute further legal proceedings.
15. In terms of the decision by the Judge that cannot be faulted. It was apparent at the time of the hearing that all legal avenues to obtain contact or access to his daughter had been followed. He was to have no contact with her. As that was the central plank of the appellant's application to remain it is entirely understandable why the decision of the Secretary of State for the Home Department was upheld and the appeal dismissed. I can find no error of law.
16. I explained to the appellant that if he still wished to pursue the avenue of appeal, that he should obtain the detailed letter from his solicitors setting out the nature of the appeal and giving some indication as to the likelihood of success. If the appellant could raise sufficient funds to lodge the proceedings in accordance with that advice so be it. It seemed to me it was necessary for those matters to be in hand in order for the appellant then to approach the respondent with a request for a further discretionary period of leave. It would be a matter for the respondent whether to grant that further leave to remain or not. It was not a matter however that the Tribunal was properly seized of in the course of this appeal process.
17. So far therefore as the appellant's appeal to the Upper Tribunal is concerned that appeal is dismissed. The original decision of the First-tier Tribunal Judge shall stand, namely that the appellant's appeal in respect of the Immigration Rules is dismissed as is that relating to Article 8 of the ECHR.

Signed

Date

Upper Tribunal Judge King TD