



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

Appeal Number: IA/48393/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 29th July 2014**

**Determination
promulgated
On 1 August 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GREVON MARIO HARRIS

Respondent

For the Appellant: Mr Young, Senior Presenting Officer
For the Respondent: Mrs Moore, of Drummond Miller, Solicitors

DETERMINATION AND REASONS

1. The parties are as described above, but are referred to in the rest of this determination as they were in the First-tier Tribunal.
2. By determination issued on 18th March 2014 Judge Balloch dismissed the Appellant's appeal to the First-tier Tribunal under the Immigration Rules, because he could not succeed under Appendix FM and paragraph EX1 did not apply, but allowed his appeal under Article 8 of the ECHR, outside the Rules.

3. The SSHD's application to the First-tier Tribunal for permission to appeal to the Upper Tribunal was received on 28th March 2014. It states that the determination "was not received by the Home Office until 21st March... today is the last date to make an in time challenge".
4. The proposed Grounds of Appeal are rather obscurely worded. Their ultimate point (I think) is that the Immigration Rules, including paragraph EX1, form a complete code, and the judge had no good reason to go beyond the Rules.
5. On 29th April 2014 First-tier Tribunal Judge Frankish issued a decision headed "Permission to Appeal Granted", on the view that the point in the grounds was that circumstances arising from a parental relationship with a child fell under paragraph EX1 and the judge should have considered allowing the appeal within the Rules.
6. The application for permission is incorrect in stating that 28th March was the last date for applying. Time runs from the deemed date of service not the actual date of receipt: Asylum and Immigration Tribunal (Procedure) Rules 2005, paragraph 24(2).
7. Mr Young had ascertained from the file that the determination was in fact received by the Home Office on 20th not on 21st March, so an error was made in that respect. The application was out of time, not in time as it purported to be.
8. The First-tier Tribunal Judge who purported to grant permission ought firstly to have dealt with the issue of extending time. Unless and until time is extended, a valid grant of permission cannot be made.
9. Mr Young submitted that the delay was the shortest possible and that in the interests of justice the SSHD's application should now be admitted and a valid grant of permission made.
10. I observed that even if the case were to reach the stage of making a fresh decision, it was difficult to see how the SSHD's grounds could prosper. It is plain, as Mrs Moore submitted, that the case could not have succeeded under paragraph EX1; but even if some flaw were to be found in the determination, at the stage of making a fresh decision there would be no good reason for finding against the Appellant. Under section 117B of the 2002 Act the public interest does not require removal if a person has a genuine and subsisting parental relationship with a UK citizen child and it would not be reasonable to expect the child to leave the UK. The existence of those circumstances is not in dispute. Mr Young was unable to point to any matter which might lead to a result adverse to the Appellant.
11. The only problem is how to resolve the matter procedurally. The First-tier Tribunal grant of permission was not validly made. One approach would be to rule that the issue of extending time is still to be decided by the

First-tier Tribunal. Another would be for the Upper Tribunal, exercising the powers of the First-tier Tribunal, to decline to extend time. Pragmatically, however, the case having reached this stage, I think it is better to resolve the case as follows. Time to apply for permission is extended and permission is granted, only to enable the Upper Tribunal to make the following decision. The SSHD's appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal, allowing the appeal under Article 8 of the ECHR, shall stand.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

31 July 2014
Upper Tribunal Judge Macleman