



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/30096/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 28 May 2015

Determination Promulgated
On 8 June 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Asam Ali

[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms S Akhtar, instructed by ANB Law

For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Asam Ali, date of birth 10.2.78, is a citizen of Pakistan.
2. This is his appeal against the decision of First-tier Tribunal Judge Herwald promulgated 31.12.14, dismissing his appeal against the decisions of the respondent, dated 17.7.14, to refuse him leave to remain in the UK on the basis of family life and to remove him from the UK pursuant to section 47 of the Immigration Asylum and Nationality Act 2006. The Judge heard the appeal on 12.12.14.

3. First-tier Tribunal Judge Landes granted permission to appeal on 20.2.15.
4. Thus the matter came before me on 28.5.15 as an appeal in the Upper Tribunal.
5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Herwald should be set aside.
6. The appellant had separated from his wife but had some form of contact with his daughter, now 2 years of age, at a contact centre. It was asserted that the appellant and his wife had reconciled a few weeks prior to the appeal hearing in the First-tier Tribunal.
7. In the First-tier Tribunal it was conceded on behalf of the appellant that he could neither meet paragraph 276ADE nor Appendix FM of the Immigration Rules. The judge found in any event that even if Appendix FM did apply, there were no insurmountable obstacles to family life continuing outside the UK. However, the judge also found that there was no genuine reconciliation between the appellant and his former partner, as claimed. Neither did the judge find any compelling circumstances so as to justify, exceptionally, considering the appellant's private and family life outside the Rules. Nevertheless, the judge went on, from §25 of the decision, to consider Article 8 family life rights, applying the Razgar stepped approach, taking into account the best interests of the child pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009, and section 117B of the 2002 Act. At §29 the judge concluded that any interference was insufficiently grave to engage Article 8, but at §30 that even if Article 8 is engaged the interference would be proportionate.
8. Much of the balance of the decision set out the judge's cogent reasons for concluding that the appellant had not reconciled with his wife, stating at §37 it was perfectly clear that the appellant was lying. The judge highlighted stark and serious discrepancies and inconsistencies between the evidence of the appellant and his wife. At §44 the judge concluded that the reconciliation was a charade for the purpose of court proceedings.
9. It is significant that the wife and his daughter have both British and Pakistani nationality; they had visited Pakistan in November 2013 and they speak Urdu. At §46 the judge took into account the best interests of the child and concluded that if there is any family life, they can continue that in either Spain, where the wife went to marry the appellant, or Pakistan. Whilst, as British citizens, the wife and daughter cannot be compelled to leave the UK that is not the same thing as it being unreasonable on the facts of this case to expect them to do so, should they wish to continue the claimed family life with the appellant.
10. In granting permission to appeal, Judge Landes found the grounds, primarily directed towards the judge's findings on the spousal relationship, "very thin." I find that the judge gave clear and cogent reasons for concluding that the appellant and his wife were not telling the truth and that they had not reconciled at all.

11. Judge Landes also found that given the judge's finding that there had been no reconciliation, there was no arguable merit in the ground that the judge failed to consider that the wife had been born in and lived all her life in the UK. In effect, there was no family life with his wife that he could rely on.
12. However, Judge Landes considered it an arguable error of law that the First-tier Tribunal Judge failed to consider the impact on the daughter of the appellant being removed from the UK if, as the judge found, the appellant and his wife had not reconciled and given that the child evidently had regular contact with the appellant, but the child would likely be remaining in the UK if the relationship between her parents had in truth broken down.
13. In her submissions, Ms Akhtar relied on the best interests of the child and her ties to the UK, including her mother, grandparents and extended family in the UK, as well as her contact with the appellant. The child and mother had lived all their lives in the UK. It was submitted that it would be unreasonable to expect the mother and child to relocate to Pakistan. However, I find that the judge has given cogent reasons for finding it would be reasonable. It cannot be said that this finding is irrational, perverse or unsupported by cogent reasons.
14. In summary, I find that there was little or no evidence before the First-tier Tribunal of any likely adverse effect on the child if the appellant were to be removed; the burden of demonstrating this being on the appellant. The appellant and his wife were separated and the only contact he had with his daughter was necessarily very limited, given that it was only at a contact centre. In essence, there was very little, if any, evidence of the strength of connection between the appellant and his daughter. I bear in mind that at A95 there are photographs said to be of the appellant with his daughter, which one might well regard as staged, given there appears to be no genuine purpose for the photographs other than to support his application, and at A147 a letter suggesting that contact has been agreed. However, the letter, dated 3.9.14, states that contact is for an hour once a week. It is stated that this will be reviewed once the child feels comfortable in his sole care. However, there was no evidence that contact had progressed beyond the one hour a week.
15. The evidence adduced by the appellant, including as to his relationship with the child was poor, limited, and in the main not accepted by the judge, who found the appellant to be a liar who could not get his story straight. In essence, the judge rejected the appellant's case in its entirety. Nevertheless, the judge specifically took into account the best interests of the child in the Article 8 assessment. If, as the appellant claimed, the couple had reconciled, the judge found, for cogent reasons set out in the decision, that it would be reasonable on the facts of this case for the family to continue their family life outside the UK, either in Spain or Pakistan. If they had not reconciled, as the judge in fact found, there was insufficient evidence before the Tribunal to demonstrate that in an Article 8 proportionality assessment that the best interests of the child in retaining intermittent contact with the appellant outweighed the public interest in removing the appellant who had no relationship with a partner in the UK and no alternative basis to remain in the UK.

16. I find that the conclusion of the First-tier Tribunal was one open to the judge on the limited evidence before the Tribunal and for which cogent reasons have been provided.

Conclusion & Decision

17. For the reasons set out herein, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.



Signed

Deputy Upper Tribunal Judge Pickup

Dated 18 August 2015

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.



Signed

Deputy Upper Tribunal Judge Pickup

Dated 18 August 2015