



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/36122/2014

THE IMMIGRATION ACTS

Heard at Field House  
On 8 May 2015

Decision and Reasons Promulgated  
On 12 May 2015

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr RITIN KUMAR SHETTY  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Vokes, Counsel (instructed by Crown & Mehria Solicitors)  
For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

**DETERMINATION AND REASONS**

*Introduction*

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Cruthers on 10 February 2015 against the determination of First-tier Tribunal Judge Stott who had dismissed the Appellant's appeal under Appendix FM as the parent of a United Kingdom settled child and on human rights (Article 8

ECHR family life) grounds against his removal in a decision and reasons promulgated on 10 December 2014.

2. The Appellant is a national of India, born on 12 August 1980. The Appellant had entered as the dependant spouse of a Tier 2 migrant. The Appellant and his spouse had subsequently separated. Their son born in India on 20 August 2010 was living with his United Kingdom settled mother. The Appellant had limited contact rights which he had been seeking to extend.
3. Permission to appeal was granted by Judge Cruthers with express reluctance because he considered that it was arguable that the judge had erred by failing to provide an adequate explanation of his reasons for rejecting evidence that the Appellant did not have an active involvement in the life of his son, a potential material error of law.
4. Standard directions were made by the tribunal, indicating that the appeal would be reheard immediately if a material error of law were found. No rule 24 notice had been filed on the Respondent's behalf, but Ms Brocklesby-Weller confirmed at the start of the hearing that the appeal was opposed.

*Submissions – error of law*

5. Mr Vokes for the Appellant relied on the grounds of onwards of appeal and the grant of permission to appeal. The judge had failed to take account of the evidence before him of the Appellant's involvement in his son's life which had been considerable and active. The father had been the primary carer in the past. RS (immigration and family court proceedings) India [2012] UKUT 00218 (IAC) and RS (immigration/family court issues) India [2013] UKUT 82 (IAC) were relevant. There had been family court proceedings on the same day as the First-tier Tribunal hearing, although Mr Vokes candidly accepted that there had been no application to adjourn made on the Appellant's behalf to await the outcome. The judge's findings against the Appellant had been too wide, and had not factored in important positive findings such as the bond between the son and his father. The son's best interests had not been properly considered. The decision and reasons should be set aside.
6. Ms Brocklesby-Weller for the Respondent opposed the onwards appeal. The Appellant was simply seeking to attack the judge's findings of fact which had been open to him on the evidence as it stood on the day of the hearing. There was no error of fact. The CAF/CASS report before the judge was very recent and was independent, so he was entitled to give weight to it. Having access was a different matter from involvement, as the Immigration Rules made clear. The CAF/CASS report showed that there had been problems with contact. The section 55 duty had been discharged. The decision and reasons should stand.
7. Mr Vokes addressed the tribunal in reply. The judge had placed too much emphasis on the CAF/CASS report rather than on the orders of the family court. The judge's reasoning had been inadequate.

8. The tribunal indicated at the conclusion of submissions that its determination was reserved.

*No material error of law finding*

9. There was evidence that matters between the Appellant and his family have moved on since the date of the hearing before Judge Stott, but of course the tribunal can have no regard to any post hearing developments. Nor can the tribunal substitute its view of the evidence. The issue is whether the findings Judge Stott reached were open to him. The tribunal has concluded that they were.
10. The decision to proceed with the First-tier Tribunal hearing when the family court was considering an application for parental contact by the Appellant on the same day elsewhere was a reasonable one. There was no application to adjourn by either party and it was in everyone's interests for the First-tier Tribunal appeal to proceed so that the Appellant knew where he stood in terms of his immigration status. Permission to disclose the CAF/CASS report to the First-tier Tribunal was in place, so the relevant evidence was available. The fact that the Appellant is disappointed with the First-tier Tribunal's decision cannot amount to a procedural error leading to unfairness.
11. On behalf of the Appellant the judge's reasoning was subjected to close scrutiny and a sustained challenge. Sensibly it was not suggested that the judge's decision had strayed into perversity. Plainly it had not. In the tribunal's view the challenge in the end amounted to disagreement with the judge's conclusions, not material error of law. No errors of fact were identified in the decision and reasons. There was no dispute that the Appellant had acted as the Appellant's sole carer for three months ending in February 2012 (prior to the son's first birthday) and had later shared his care until the marriage broke down. These and other relevant facts were accurately recorded, including the fact that the CAF/CASS report made no mention that loss of contact with the father or his absence would be detrimental to the child's development.
12. As Ms Brocklesby-Weller submitted, the CAF/CASS report to which the judge gave weight was recent, independent and balanced. The report described various difficulties. At the date of the hearing the judge was entitled to find, and gave adequate reasons for finding, that the Appellant's rôle had been limited to contact and did not amount to active involvement.
13. The judge gave close attention to the Appellant's son's best interests, again with reference to the CAF/CASS report: see, in particular, [15], [23] and [24] of the decision and reasons. He found that contact could be maintained between the Appellant and his son by various means. Again no error could be demonstrated in that finding.
14. This was a case where various reasonable but differing conclusions could be properly drawn from the same facts. The conclusions the judge reached after

hearing directly from the Appellant were proper and were adequately reasoned. The tribunal finds that there was no material error of law in the decision and reasons and there is no basis for interfering with the judge's decision.

**DECISION**

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

**Signed**

**Dated 8 May 2015**

**Deputy Upper Tribunal Judge Manuell**