



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

Appeal Number: IA/52250/2013

THE IMMIGRATION ACTS

Heard at Birmingham

On 30 January 2015

**Decision & Reasons
Promulgated
On 9 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**MR FETHI SAID BOUCETTA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Bhachu of Counsel

For the Respondent: Mr Mills, a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Algeria. He appears to have arrived unlawfully in the UK in 2001 and applied unsuccessfully for asylum. He began a relationship with an EEA national (Lidia Pietrzak) in February 2006 and they have a child together (Alexandra) who was born on 8 December 2006. On 8 September 2008 the appellant was given a residence card by virtue of his relationship with Miss Pietrzak. That relationship subsequently came to an end although, fortunately, the appellant has

maintained a good relationship with Alexandra and with his former partner. She lives with Alexandra in Manchester and the appellant regularly has contact including staying contact.

2. It appears that on 23 August 2013 the appellant sought permanent residence in the UK but that application was refused by the respondent on 22 November 2013. The respondent issued a notice informing the appellant of the refusal of the right to grant permanent residence in the UK. The appellant subsequently appealed that decision to the First-tier Tribunal where he was successful in persuading the Tribunal to allow his appeal on “human rights grounds”.
3. The appeal to the Upper Tribunal was by the respondent whom I will continue to refer to thus, despite the fact that she is the appellant before this Tribunal. Judge of the First-tier Tribunal Simpson found that there were at least two arguable errors of law in the decision of the First-tier Tribunal:
 - (1) the Judge failed to adopt the correct approach to Article 8 having regard to the changes to the Immigration Rules and to recent case law; and
 - (2) the circumstances the appellant found himself in were neither compelling nor exceptional.
4. In her grounds of appeal against the decision of the First-tier Tribunal the respondent complains that no adequate reasons were given for the decision and that the relationship between the appellant and his daughter could continue “over a distance” and that his family could support him there. It was thought that the appellant could maintain contact. The appellant’s circumstances were not exceptional. The appellant was part of an ordinary family unit which should be considered first and foremost under the Rules.

The Hearing

5. Mr Mills explained that he had only recently had sight of the Rule 24 response submitted by the appellant. This stated that the Judge had rightly focused on the best interests of the child and as such had been entitled to conclude that the appeal should be allowed on human rights grounds. Having considered the Rule 24 response Mr Mills pointed out that Article 8 had not been raised in the original application and no removal directions had been made. However, it seems that his predecessor before the First-tier Tribunal had conceded that Article 8 may be considered and therefore could not be argued that the First-tier Tribunal Judge was wrong to do so. The Immigration Judge gave no consideration to the Immigration Rules and the failure of the appellant to meet the financial requirements thereof. However, the question was whether the appellant had a genuine and subsisting relationship with a qualifying child. If he did then by virtue of Section 117B(vi) of the Immigration Act 2014 there is no presumption in favour of removal

provided it would not be reasonable to expect the child to leave the UK. Essentially, it was conceded by Mr Mills that the appellant had such a qualifying relationship and it was unrealistic of the respondent to argue that the appellant could go back to Algeria with a child who had lived all his life in the UK. In the circumstances, Mr Mills conceded that there was no material error of law although there were errors in the decision of the First-tier Tribunal.

6. Ms Bhachu of Counsel confirmed the present contact arrangements.

Conclusion

7. I indicated to the parties at the hearing that I accepted the respondent's concession. Accordingly, I will declare that the decision of the First-tier Tribunal does not contain any material error of law.

Notice of Decision

The respondent's appeal is dismissed.

The decision of the First-tier Tribunal does not contain a material error of law. Accordingly, that decision stands.

No anonymity direction was made by the First-tier Tribunal.

The First-tier Tribunal made no fee award and that decision stands.

Signed

Date

Deputy Upper Tribunal Judge Hanbury