



SELF-TYPED

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

Appeal Number: IA/10279/2015

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Decision & Reasons Promulgated
Birmingham
On 20 January 2016** **On 26 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MAURICE MALCOLM STENNETT
(ANONYMITY DIRECTION NOT MADE)**

Respondent/Claimant

Representation:

For the Appellant:

Ms R Petterson, Senior Presenting Officer

For the Respondent/Claimant: Ms A Imanovic, Counsel instructed by Peer & Co

DECISION AND REASONS

1. The Secretary of State appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Pacey sitting in Birmingham on 13 July 2015) allowing under the immigration rules the claimant's appeal against the decision of the Secretary of State to remove him pursuant to Section 10 of the Immigration and Asylum Act 1999, his human rights (Article 8) claim having been refused. The First-tier Tribunal did not make an anonymity

direction, and I do not consider that the claimant requires anonymity for these proceedings in the Upper Tribunal.

The Reasons for the Grant of Permission to Appeal

2. On 22 October 2015 First-tier Tribunal Judge E.B Grant granted permission to appeal for the following reasons:

“For the reasons set out in the grounds it is arguable that the FtTJ erred in law by failing to apply and make findings on the relevant paragraphs of the Immigration Rules in Appendix FM.”

The Hearing in the Upper Tribunal

3. Ms Amanovic for the claimant accepted that the judge had erred in law for the reasons given in the application for permission to appeal read with the grant of permission, and invited me to remit the appeal to the First-tier Tribunal for a de novo hearing. I was not satisfied that this was the appropriate course, in the light of the unchallenged evidence pertaining to the claimant’s family circumstances and the unchallenged primary findings of fact made by Judge Pacey. After exploring the application of Appendix FM to the facts, Ms Petterson agreed with me that it would be appropriate to allow the claimant’s appeal under paragraph EX.1(a) of Appendix FM.

Discussion

4. Judge Pacey expressly allowed the appeal under the rules, as distinct from allowing it on Article 8 grounds outside the rules. She thereby implied that the claimant succeeded under the parent route within Appendix FM. However she did not adequately explain why. She made reference to some of the eligibility requirements, but she did not address EX.1(a). Instead, she made a finding which was more appropriate to a proportionality assessment outside the rules, namely that it was in the best interests of child “K” that her father remained present in her life.
5. As it is now agreed that the outcome was correct, it is arguable that the inadequacy of reasoning is not material. But justice must not only be done, but be seen to be done. The losing party is entitled to know why he or she has lost, and I find that the decision is vitiated by a material error of law on this account.

The Remaking of the Decision

6. The claimant, who is a national of Jamaica – a majority English speaking country listed in GEN.1.6, is in a genuine and subsisting parental relationship with Child K (date of birth 15.02.03), a British national. At the same time, he is not in a relationship or living with Child K’s mother, a British national with whom the child normally lives. The mother is thus the child’s primary carer. As found by Judge Pacey at [20] – [24], the claimant has established that he takes and intends to continue to take an active

role in Child K's upbringing, with the blessing of her mother who allows him to have regular contact with, and access to, the child, who is autistic and requires a high degree of care and supervision. No point is taken against the claimant on the ground that his right of access to the child has not been formally ratified by a family court. Thus, as Ms Petterson accepts, the claimant meets the relationship requirements contained in E-LTRPT.2.2 to 2.4.

7. Despite having a criminal conviction, it is accepted in the refusal letter that the claimant meets the suitability requirements of Appendix FM.
8. Unless EX.1(a) applies, the claimant has to show he will be able to adequately maintain and accommodate himself and any dependants without recourse to public funds. The claimant has not sought to show that he meets the financial requirements. Unless EX.1(a) applies, the claimant will also be ineligible on immigration status grounds, as he is present in the UK in breach of immigration laws.
9. The claimant meets the criteria of EX.1(a) as he has a genuine and subsisting relationship with a British Citizen child, and it would not be reasonable to expect this child to leave the UK.

Notice of Decision

10. The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and the following decision is substituted: the claimant's appeal is allowed under Appendix FM of the Immigration Rules.

Anonymity

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Monson