



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

Appeal Number: IA/50974/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 11 March 2016

On 16 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

MR AROMEO ROHAN WELCH
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Simpson, Direct Access, Amethyst Chambers
For the Respondent: Mr J Parkinson, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Moore promulgated on 1 September 2015. Permission to appeal was granted by First-tier Tribunal Judge Landes on 26 January 2016.

Anonymity

2. No direction has been made previously, and there is no reason for one now

Background

3. The appellant arrived in the United Kingdom with leave to enter as a visitor in January 2002. He extended his leave further, with his last period of leave expiring on 31 January 2006. At the time of the leave expiring, the appellant was in custody, having been arrested for supply of Class 'A' drugs in December 2005. He was transferred to immigration detention and given temporary admission in May 2006. The prosecution was not proceeded with. Thereafter the appellant became an overstayer. The appellant sought leave to remain on human rights grounds, based on his ties to his three children, a stepchild and his partner.
4. The Secretary of State refused the application on 27 November 2014, concluding, essentially, that the appellant's partner did not qualify because she had only limited leave to remain until 20 March 2016 and that her leave was granted on the basis that she had sole responsibility for her child. With regard to the children, the appellant did not have sole responsibility for any of his biological children and had failed to provide evidence to show that he had an active role in the upbringing of any of the children referred to in his application.
5. The appellant appealed to the First-tier Tribunal.

The hearing before the First-tier Tribunal

6. The appellant and his partner gave evidence. The mothers of the appellant's children from previous relationships did not attend, albeit one provided a witness statement. The FTTJ noted that the appellant's eldest two children were British citizens who lived with their mothers and it would not be reasonable to expect either child to leave the United Kingdom. However, he dismissed the appeal on the basis that the appellant did not have genuine and subsisting relationships with the children and that he could remain in contact with them from Jamaica.

The grounds of appeal

7. The grounds of appeal did not clearly identify errors of law in that they consisted of 17 paragraphs without headings and with minimal reference to the decision in question.
8. Permission to appeal was granted on the basis that it was arguable that the FTTJ erred in finding there was no genuine and subsisting relationship between the appellant and the children and that he erred in his approach to the best interests of those children. There was also said to be an absence of reasoning in many respects and a lack of proper consideration of the best interests of the children where the appellant's presence was concerned.

9. The Secretary of State's response of 2 February 2016 indicated that the appeal was opposed. It was argued that the appellant made no material contribution to the children's lives and that their best interest had been considered at [35] of the decision.

The error of law hearing

10. Ms Simpson advised me that the appellant's current partner had not attended the hearing owing to a medical appointment involving their child. The appellant's previous partner, Ms Raymond, had attended. Otherwise, she repeated points made in her grounds, emphasising that the FTTJ had not considered the effect of the appellant's removal on his children or in relation to their best interests. In addition, there was a consent order in relation to the appellant's child 'K' which arranged regular periods of contact and this had not been taken into consideration. Nor had there been any consideration of the appellant's stepchild 'D' accompanying him to Jamaica. The FTTJ had made an error of fact as to the appellant's immigration status at the time his children were born. Ms Simpson accepted that the FTTJ's error in relation to the appellant's nationality was a small point. Finally, EX.1 of Appendix FM and section 117B(6) were not properly considered.
11. Mr Parkinson relied on the Rule 24 reply. He argued that the FTTJ had made a very careful, detailed, analysis of the appellant's complex relationships. He asked me to note that two of the parents of the appellant's children did not attend the hearing and that there was very limited evidence before the judge. He argued that the FTTJ noted that the removal of the appellant would limit face-to-face contact and that there was no reason why the child could not visit the child in Jamaica if the mother agrees. At [29] the FTTJ expressed clear concerns as to the nature of relationship between the appellant and his current partner as well as his relationship with her child from a previous relationship. The FTTJ had, however, accepted the couple lived together on and off for 4 years. The FTTJ had considered section 55 and that the appellant took his youngest child to and from nursery. Mr Parkinson accepted that the FTTJ did not fully deal with EX.1, but that this was immaterial.

Decision on error of law

12. I announced that the FTTJ made material errors of law and set aside his decision in its entirety. My reasons are as follows.
13. At [32] of the decision, the FTTJ mentions, in brief, the exceptions contained within Appendix FM but only addresses EX.1 (b). Thereafter, the FTTJ goes onto assess whether there were any significant obstacles to the appellant's integration in Jamaica.
14. While the FTTJ has, in the last sentence of the decision at [38] stated that he is not satisfied that the appellant has genuine and subsisting

relationship (in relation to his consideration of section 117B(6) of the 2002 Act) he fails to provide any reasons for this conclusion.

15. I have taken into consideration that the FTTJ's comments on the appellant's domestic arrangements in relation to his current partner, her child and his three biological children, but I do not accept that it can be inferred that it was these matters which lead him to conclude that the appellant's relationships with his children were not genuine and subsisting.
16. On one matter, the FTTJ was mistaken. At [37] he stated that the appellant entered on a visitor and overstayed and "*continued to father children.*" However, the appellant had leave to remain in the United Kingdom at the time that his two eldest children were born. I am of the view that the FTTJ's misunderstanding of the appellant's immigration status contributed to his overall findings.
17. The FTTJ found that it was in the best interests for the various children to remain with their mothers in the United Kingdom. However, he made no reference to whether it was in their best interests for the appellant to remain in the United Kingdom. In view of the consent order and evidence of actual contact between the appellant and K, if the FTTJ found that it was not in K's best interests that the appellant continue to enjoy family life in the United Kingdom, he needed to have provided reasons.
18. There was no findings with regard to the appellant's stepchild, D, who has lived in the United Kingdom continuously since his birth approximately 12 years ago and in respect of whom there were no findings as to whether it was reasonable to expect him to leave the United Kingdom.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside, in its entirety.

The appeal is remitted to the First-tier Tribunal, de novo, to be heard at Taylor House with a time estimate of 2 hours (not before FTTJ Moore).

Signed
Deputy Upper Tribunal Judge Kamara

Date: 12 March 2016