



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

Appeal Number: HU/10798/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 27 November 2017**

**Decision and Reasons
Promulgated
On 29 November 2017**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**RASIM GJOKA
(Anonymity Direction Not Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms B. Maistry, Counsel instructed by ABM Solicitors
For the respondent: Mr P. Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 28 October 2015 to refuse a human rights claim in the context of an application for further leave to remain as a person exercising access rights to a child.
2. In a decision promulgated on 06 August 2017 I set aside the First-tier Tribunal decision because inadequate consideration was given to the best

interests of the children in circumstances where the evidence indicated that the appellant had made some efforts to re-establish contact with them, albeit at that time, rather slow and sporadic efforts. The First-tier Tribunal decision was set aside and the appeal listed for a resumed hearing to allow time for the appellant to produce evidence of the current situation.

3. The appellant's bundle included a number of pieces of correspondence from a solicitor who is advising him in relation to family law matters. The correspondence shows that they have recently been able to contact the mother of the appellant's children in order to begin the process of re-establishing contact pursuant to a family court order dated 28 March 2012. The appellant's evidence is that his former partner moved away and that he was unable to establish contact with her for some time. The family court has given permission for the order to be disclosed in these proceedings. The order stated that the children were to have monthly contact with their father at a specific contact centre and made provision for increasing contact if certain conditions were met.
4. Mr Duffy accepted that the evidence showed that it was appropriate for limited leave to be granted to allow the appellant time to re-establish contact with his children. I indicated that it had also been my provisional view that refusal of leave to remain did not strike a fair balance in relation to the appellant's family life with his children given the current evidence showing that his solicitors are now in negotiation with the children's mother about re-establishing contact. In light of the concession made at the hearing, it is a matter for the respondent to decide what period of limited leave to remain should be granted. Mr Gjoka is aware that he will need to show that there has been real progress in re-establishing contact with his children if and when he applies to extend any period of limited leave that might be granted following this decision.
5. I am satisfied that the decision is unlawful under section 6 of the Human Rights Act 1998 because it does not strike a fair balance between the appellant's right to family life and the public policy of maintaining and effective system of immigration control.

DECISION

The appeal is ALLOWED on human rights grounds

Signed  Date 27 November 2017
Upper Tribunal Judge Canavan