



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

Appeal Number: IA/18194/2015

THE IMMIGRATION ACTS

**Heard at Birmingham
On 27th July 2017**

**Decision & Reasons Promulgated
On 19th September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**ADNAN [M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Islam (Solicitor)
For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Asjad, promulgated on 30th March 2017, following the hearing at Birmingham Sheldon Court on 31st January 2017. At the hearing, the judge dismissed the appeal of the Appellant, and therefore the Appellant

subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

2. The Appellant is a male, a citizen of Pakistan, who was born on [] 1989. He entered the UK on 25th December 2012 with entry clearance on a spouse's visa, which was valid until 17th March 2015. He applied for further leave to remain in the UK under the parent route, which was refused on 28th April 2015 and that is the decision under appeal.

The Appellant's Claim

3. The Appellant's claim is that he is married to [NH], a British citizen, and they have a son, [AA], who was born on [] 2009. Their marriage had broken down, but on 21st June 2016, the Birmingham County Court made directions for the Appellant to begin preparatory sessions over two consecutive weeks, in relation to his child, with direct supervised contact on a fortnightly basis.

The Judge's Findings

4. The judge held that, notwithstanding there being contact arrangements in place at the time of the hearing, and notwithstanding the Appellant's evidence that during the four hours of contact session that he has with his child, that he plays, talks and eats with his son (see paragraph 18), nevertheless, none of this

“Amounts to the Appellant playing an active role in his child's upbringing. Although the contact arrangements are a means by which the child is able to have some sort of a relationship with their parent, the evidence before me shows that it is the mother who is taking the active role in the child's upbringing and she is doing so on her own” (paragraph 19).

5. The appeal was dismissed.

Submissions

6. At the hearing before me on 27th July 2017, Mr Mills submitted that, notwithstanding that there was a Rule 24 response against the Appellant's appeal following the rejection of his claim by Judge Asjad, the plain fact here was that the decision of Judge Asjad was unsustainable in the face of a Family Court contact order, the genuineness of which could not be challenged, such that it was simply not open to the judge to go behind it and to say that there was no parental relationship between the Appellant and his son.
7. The child was a British citizen. It was not reasonable for him to be removed with his father to Pakistan. The Secretary of State's own policy in relation to such matters was set out in **SF (Albania)**, and on that basis the appeal should be allowed.

8. Mr Islam, appearing on behalf of the Appellant, submitted that this must be an appropriate course of action.

9. Notice of Decision

10. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. In the light of Mr Mills' submissions, which recognises that there was an error of law, I conclude that the judge's decision was vitiated by a material error.

11. As the grant of permission by the First-tier Tribunal on 5th June 2017 made clear, "since the Family Courts appear to have examined the matter in depth and decided in favour of the Appellant having contact with his son it is arguable that the finding of no parental relationship was not open to the judge on the evidence".

12. It was neither here nor there as to whether the Appellant, as the child's father, ought to have played a more active role, or not. Given my finding that there is an error of law, I remake the decision as follows.

13. This appeal is allowed.

No anonymity direction is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

15th September 2017