

**Upper Tribunal  
(Immigration and Asylum  
Chamber)  
Appeal Number:  
PA/06855/2017**



**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 November 2017**

**Decision & Reasons  
Promulgated  
On 16 November 2017**

**Before**

**RIGHT HONOURABLE LORD BOYD OF DUNCANSBY  
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)  
UPPER TRIBUNAL JUDGE STOREY**

**Between**

**MF  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In Person  
For the Respondent: Mr Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Pakistan. He appeals with leave against a decision of First-tier Tribunal Judge Lal promulgated on 12 September 2017. He entered the UK on a student visa in 2011 but that was curtailed following the revocation of his sponsor's licence. He made an application outside the rules which was rejected in August 2015. He was arrested as an over stayer in 2017 and claimed asylum. The application was refused on 10 July 2017. Judge Lal refused his appeal against that decision.
2. The appellant formed a relationship with a Ugandan woman which subsisted between June and October 2016. A daughter was born of this relationship at the end of June 2017. His former partner obtained a Non-Molestation Order against the appellant and this was finalised on 18 September 2016, the appellant electing not to contest the making of the Order while making no admissions.

3. The appellant hopes to establish contact with his daughter and has made an application to the Family Court for the appropriate order. A hearing has been set down for 5 December 2017.
4. In the permission to appeal reasons F-tT Judge Gibb notes that it is arguable that the judge gave no consideration to the best interests of the appellant's child and only considered the family proceedings from the mother's perspective. In doing so he disregarded the interface between the family and immigration proceedings, given that family proceedings were underway; **RS (immigration and family court proceedings) India [2012] UKUT 218 (IAC)**.
5. The respondent's Rule 24 response conceded that there was an error of law and requested that the case be remitted to the F-tT for a rehearing. Mr Duffy explained that the view had been taken that the Judge had failed to consider the possible impact of the Family Court proceedings. He suggested that the asylum claim had no merit and it may be that the case could remain in the UT.
6. We are satisfied that this was a material error of law by Judge Lal. We considered whether or not to continue the case in the UT or remit as requested by the appellant and by the respondent in her Rule 24 response. Having considered the matter we think that it should be remitted. The appellant will be free to reargue his asylum claim.
7. Two matters arise. The first is the importance as we see it that the Family Court is sighted regarding the pending proceedings before the First-tier Tribunal insofar as they relate to his immigration status. To this end we shall take steps to ensure our decision is sent to that Court. Secondly the rehearing in the F-tT should await the outcome of the proceedings in the Family court on 5 December 2017.

### **Notice of Decision**

The decision of the First tier Tribunal judge is set aside for error of law and the case remitted to be reheard in the First-tier Tribunal before a judge other than Judge Lal.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 15 November 2017

Right Honourable Lord Boyd of Duncansby

