



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08278/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 12 October 2017

**Decision & Reasons
Promulgated
On 24 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR G S P

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Mr P Tapfumaneyi, Legal Representative, PT Law & Associates

DECISION AND REASONS

Background

1. The appellant in this case is the Secretary of State and the respondent is Mr G S P. However, for the purposes of this Decision and Reasons I refer to the parties as they were before the First-tier Tribunal where Mr G S P was the appellant.
2. Mr G S P, a citizen of Zimbabwe, entered the UK on 28 August 2002 and subsequently claimed asylum which was refused and his appeal rights exhausted in May 2003. On 2 June 2016 Mr G S P lodged further submissions which were refused on 6 July 2016. In a Decision and Reasons promulgated on 29 March 2017 Judge of the First-tier Tribunal Thew dismissed the appellant's further appeal on asylum grounds and

humanitarian protection, but allowed the appeal on human rights under Appendix FM, EX.1(a).

3. The respondent appealed on the basis that it was argued the judge failed to resolve conflicts of fact including at paragraphs 46 and 27 of the Decision and Reasons, which undermined the positive credibility findings made in favour of the appellant's partner, Ms A, without which, neither party disputed, that the judge could not have found a genuine and subsisting relationship between the appellant and his child, which was the basis of the appeal being allowed under Appendix FM.
4. It was further submitted that the judge erred in failing to give adequate reasons as to why he found the appellant's relationship with his daughter to be genuine and subsisting and that the judge had failed to take into consideration the lack of evidence.
5. It was submitted by the respondent that there was no evidence to suggest that the appellant had a genuine and subsisting relationship with his daughter or that he intended to maintain one in the future. The respondent also submitted that the First-tier Tribunal had failed to consider Section 117B. However, Mr Tufan before me quite properly withdrew this ground as the appeal was allowed under Appendix FM.
6. Mr Tufan accepted that at paragraph [36] of the Decision and Reasons the judge set out that she had analysed all the evidence before her and concluded that although the appellant had not established that he was in a genuine and subsisting relationship with Ms A that was akin to marriage she, on a balance of probabilities, that he was living at her premises and that he had established that it was more likely than not that he was in a genuine and subsisting parental relationship with their daughter. The judge went on to find that since the child's birth whilst the appellant had not been living with the child initially, he had been in constant contact with her and that he had shown a parental interest in her upbringing.
7. Mr Tufan questioned the findings at [46] submitting that a finding that the appellant had unrestricted access to his daughter did not mean that they had a subsisting relationship, particularly given that the judge indicated that there was no evidence from the school and that the appellant did not pay maintenance. However it was open to the judge to find, for the reasons she gave, that she did not accept that the relationship between the appellant and his partner was one akin to marriage or that it was genuine and subsisting, whilst still finding that the appellant has a genuine and subsisting relationship with his daughter. The judge found the Ms A to be a credible witness including as to the course of her relationship with the appellant. The judge found that she was more realistic, in the judge's findings at [31], as to the nature of the relationship between the appellant and Ms A and preferred her evidence as to the amount of time that he had spent with her when she was living at the previous address. The judge also preferred her evidence that he was staying there prior to May 2016 on one to two days a week.

8. Although it was submitted that there was an alleged conflict in paragraph [27] where it was Ms A evidence that she had told the council that she was not with her child's father anymore I accept that this was in the context of her general evidence about the financial assistance she was receiving from the council and does not undermine the judge's adequate findings, including at [35], that he had been living at the same address as his partner and his daughter since May 2016. The judge also found at [34] that it was credible in Ms A's evidence that the appellant was in very regular contact with his daughter even when he was not living with her and that there were photographs covering a span of years. The fact that these do not cover each and every period of the child's life does not invalidate the judge's findings which were considered in the round and open to her. It was a matter for the judge what weight she attached to those photographs and there was nothing irrational about her approach.
9. Mr Tufan conceded that whilst there was a challenge from the author of the grounds of appeal he himself had no further substantive challenge other than to rely on those grounds.
10. The fact that there was no evidence from the school and that the judge criticised the evidence of the appellant in general does not make the judge's findings contradictory in respect of the underlying finding of Ms A's credibility and that on a balance of probabilities the appellant had established that he was in a genuine and subsisting relationship with his daughter. I am also not satisfied that there is any merit in the argument that the judge failed to identify whether the appellant would continue to have a relationship with his daughter given that the judge accepted Ms A's evidence that the appellant's relationship with his daughter was a genuine one. On a balance of probabilities there is no error in the judge assuming that such a genuine and subsisting was likely to continue.

Notice of Decision

11. The decision of the First-tier Tribunal discloses no error of law such that it should be set aside and is preserved. The appeal by the Secretary of State is dismissed.

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 his 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: 19 October 2017

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee was paid or payable so no fee award is made.

Signed

Date: 19 October 2017

Deputy Upper Tribunal Judge Hutchinson