



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03358/2017

THE IMMIGRATION ACTS

Heard at Field House
On 9th July 2018

Decision & Reasons Promulgated
On 10th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between

YUKE [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Moriarty, Counsel instructed by D J Webb & Co Solicitors

For the Respondent: Mr C Howell, Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Oliver promulgated on 18th December 2017 in which Judge Oliver dismissed the Appellant's appeal on human rights grounds. The Appellant is a Ghanaian man who was born on 2nd June 1984. He applied on 21st July 2015 for leave to remain on the basis of his parental relationship with his son, [J], who is a British national. [J] has a British national mother with whom he is said to live.

2. Judge Oliver took account of the Appellant's adverse immigration history which included that he had provided forged bank statements with a previous application. The Judge considered the full history including that the Appellant had previously applied for leave to remain as the spouse of [KA], which application was then refused and how he had then unsuccessfully applied for the issue of a residence card under the Immigration (EEA) Regulations 2006. He had become appeal rights exhausted on 24th March 2015.
3. The Appellant had made a complaint against his previous solicitors on the basis that it was said that they had wrongly claimed that he was the primary carer of his son in a previous application that had been made by him. That complaint against his previous solicitors had been upheld.
4. Judge Oliver found at paragraph 13 of his judgment that the immigration history of the Appellant had a chronological sequence showing that "he has recently played fast and loose in a cynical fashion with the immigration controls of this country, so as to try to regularise his stay" and that "he has structured in a dubious and exaggerated manner his involvement with the child [J] in the present application to the same end".
5. Judge Oliver found there is no realistic chance of any further improved contact arrangement being made, despite him accepting that the evidence before him was in fact that there was five hours' contact which was supervised, as stated by the Appellant in cross-examination. Judge Oliver found that the current arrangement was being used by the Appellant to further his hopes of remaining in the UK by any means and on that basis the Judge dismissed the Appellant's appeal on human rights grounds.
6. The Appellant has sought to appeal against that decision for the reasons set out within the Grounds of Appeal. Those are a matter of record and are therefore not repeated in their entirety here, but in summary it is argued that the First-tier Tribunal Judge failed to take proper account of the fact that the complaints against the Appellant's previous solicitors were upheld and the Judge failed to consider the Appellant's circumstances with a fresh pair of eyes. It is argued that the Judge has failed to properly take account of the relationship that the Appellant had with his son and has failed to properly consider Sections 117A to Section 117D of the Nationality, Immigration and Asylum Act 2002, in particular Section 117B(6). It is further argued in the grounds of appeal that before Judge Oliver the Home Office had conceded that there was a genuine, subsisting parental relationship between the Appellant and his child, but it is argued the Judge had failed to take account of that and failed to take account of the evidence from CAF/CASS and the contact supervisor regarding five sessions of successful supervised contact that had taken place between the Appellant and his son. The Judge, it is also argued, failed to take account of the best interests of the child pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009.

7. Permission to appeal in this case has been granted by First-tier Tribunal Judge Buchanan on 25th May 2018.
8. At the appeal hearing in the Upper Tribunal today before me the Appellant is represented by Mr Moriarty, Solicitor and the Secretary of State is being represented by Mr Howell, Senior Home Office Presenting Officer.
9. It has been conceded by the Secretary of State today that the decision of First-tier Tribunal Judge Oliver does contain material errors of law. It is conceded by the Respondent that the Judge has failed to properly consider whether or not there was a genuine, subsisting relationship between the Appellant and his son in light of the evidence provided by CAFCASS regarding the supervised contact that had taken place pursuant to a child arrangements order and that the Judge had failed to then properly look at the best interests of the child pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009 and also failed to properly consider Section 117B(6) of the Nationality, Immigration and Asylum Act 2002.
10. In light of those concessions it is appropriate for this court to set aside the decision of First-tier Tribunal Judge Oliver, it having been conceded by the Respondent that the decision of First-tier Tribunal Judge Oliver does contain material errors of law.
11. It is argued however by Mr Moriarty on behalf of the Appellant that the Tribunal can simply go on to remake the decision today in light of what was argued in the submissions in the skeleton argument that was before Judge Oliver, regarding Section 117B(6) and the effect of the judgment of Lord Justice Elias in the case of **MA (Pakistan) v SSHD [2016] EWCA Civ 705**. However, any decision that I make in terms of human rights has to be considered as at the circumstances as at today's hearing rather than simply the circumstances back at the date of the previous hearing in November 2017, which was now eight months ago. I do not have any clear updated evidence regarding the circumstances surrounding contact now, as at today's date, or what effect removal would have on [J] or his parents. I consider that further oral evidence will be required to be heard, and in such circumstances, it is appropriate in this case for the decision of Judge Oliver to be set aside in its entirety and for the matter to be remitted back to the First-tier Tribunal for rehearing before any Judge other than First-tier Tribunal Judge Oliver.

Notice of Decision

The decision of First-tier Tribunal Judge Oliver does contain material errors of law and is set aside. The case is remitted back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Oliver.

No anonymity order was made by the First-tier Tribunal and no such order was sought before me, therefore I make no such order.

Signed

Date 15th July 2018

RFMcGinty

Deputy Upper Tribunal Judge McGinty