



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09766/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 8 January 2018

Decision & Reasons Promulgated

On 26 January 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

NASIR [I]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Haq, solicitor agent for Harris & Green, Solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Nasir [I], was born on [] 1986 and is a male citizen of Pakistan. By a decision dated 30 June 2017, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My reasons for reaching that decision were as follows:

“1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, Nasir [I], was born on [] 1986 and is a male citizen of Pakistan. By a

decision dated 23 March 2016, the respondent refused the appellant's application for leave to remain in the United Kingdom under Appendix FM and paragraph 276ADE of HC 395 (as amended). The respondent refused the appellant under the parent route of Appendix FM and also as regards private life (paragraph 276ADE). Further, the respondent considered there were no exceptional circumstances which might engage Article 8 ECHR. The appellant and his wife Ms [N] have two children born in 2011 and 2016 respectively. The judge records in his decision that contact between the appellant and the children following the breakdown of the marriage with Ms [N] had proceeded by agreement but the "situation had deteriorated" [17]. The appellant says that he was compelled by the mother's failure to cooperate over contact to make an application to the Family Court. By the time the appellant appeared before the First-tier Tribunal, a first contact session had been due to take place at Bingley Contact Centre on 22 October 2016 but had been cancelled at short notice on account of the mother being unwell.

2. Having set out the circumstances and the reasons for refusal, the judge's decision reaches a somewhat abrupt conclusion. At [25], the judge records that "the situation has changed since the appellant made his application [for further leave to remain]." The judge notes that the appellant had made an application to the Bradford Family Court, that both the children are British citizens and that it would not be reasonable to expect either child to leave the United Kingdom (although he gives no reasons for that finding). The judge then concluded [26] that the appellant satisfied the requirements of EX.1 and then allows the appeal under the Immigration Rules.

3. The grounds of appeal raise the requirements under Appendix FM of E-LTRPT2.4. This is the Rule whereby an applicant may obtain leave to remain on the basis of contact with the child with whom he or she does not live. The respondent complains that the judge had allowed the appeal in effect under this provision of Appendix FM (although he makes no direct reference to it) without making proper findings as to the nature and extent of the parental relationship with the children or whether the appellant had provided evidence that he was taking and intended to take an active role in the children's upbringing. There is, however, a more fundamental problem with the judge's decision. As noted above, the respondent's decision to refuse the application is dated 23 March 2016 and therefore falls within the "new" provisions for statutory appeals. The judge had no jurisdiction to allow the appeal under the Immigration Rules. The appeal could only be considered on human rights grounds, in this instance Article 8 ECHR. The judge refers to Article 8 at [10] and correctly records that the facts are to be assessed as at the date of the hearing [11]. However, the remainder of the analysis indicates that the judge has applied the Immigration Rules rather than considering the appeal on Article 8 grounds. In the circumstances, I set aside the judge's decision. The decision can be remade in the Upper Tribunal; it appears that any further evidence to bring the facts as regards contact up-to-date will be brief.

Notice of Decision

4. The decision of the First-tier Tribunal which is dated 28 October 2016 is set aside. None of the findings of fact shall stand. The decision will be remade in the Upper Tribunal (Upper Tribunal Judge Clive Lane) at Bradford on a date to be fixed.

DIRECTIONS : The parties are directed to file at the Tribunal and to serve on each other any evidence upon which they may respectively intend to rely no less than 10 days prior to the resumed hearing in the Upper Tribunal. In the case of the appellant, such evidence should include copies of relevant Family Court orders as appropriate.

No anonymity direction is made.”

2. At the resumed hearing at Bradford on 8 January 2018, Mrs Pettersen, for the Secretary of State, told me that, subject to confirmation that the appellant has the benefit of an order issued by the Family Court providing that he have contact with his British children, the appeal against the Secretary of State’s decision to refuse the appellant leave to remain should be allowed. It had been hoped that the Family Court proceedings would have been concluded and the order made available in time for the resumed hearing but Mr Haq, who appeared as solicitor agent for the appellant’s solicitors, told me that this order would not be available until 15 January 2018. I asked Mr Haq to send a copy by email of the order when it is available both to Mrs Pettersen and to myself. I told Mrs Pettersen that she may make representations in writing about the order when it arrives. She told me that, given that it is very likely to indicate that contact is continuing, she would have no further comment to make. Having now received a copy of the court order and a helpful email in response from Mrs Pettersen indicating that she did not wish to make any further submissions, I remake the decision allowing the appellant’s appeal against the decision of the respondent dated 23 March 2016 to refuse him further leave to remain.

Notice of Decision

3. The appeal against the decision of the respondent dated 23 March 2016 is allowed.
4. No anonymity direction is made.

Signed

Date 23 January 2018

Upper Tribunal Judge Lane