Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/17821/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3rd May 2018	**On 11th May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR ALRICK O'NEILL CLARKE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Mr C Amgbah, UK Law Associates

DECISION AND REASONS

Background

1. The appellant is the Secretary of State and the respondent is Mr Clarke. However, for the purposes of the decision, I refer to the parties as they were before the First-tier Tribunal where the appellant was Mr Clarke.

2. Mr Clarke is a citizen of Jamaica, born on 11 September 1975. He appealed to the First-tier Tribunal against the decision of the respondent dated 11 July 2016 refusing his application for leave to remain in the United Kingdom. In a decision promulgated on 10 January 2018, Judge of the First-tier Tribunal Robinson allowed the appellant's appeal as the judge was satisfied that the appellant satisfied the requirements of paragraph EX.1. of Appendix FM of the Immigration Rules.

3. The Secretary of State appeals with permission on the grounds that the judge made a material misdirection in finding, the appellant was taking and intending to continue to take an active role in his child's upbringing, on the basis of insufficient evidence.

Error of law – discussion

4. Mr Walker, who had not drafted the grounds, indicated that he had not much to say and noted that the respondent had previously been granted leave to remain in the UK on the basis of his relationship with the child (in 2013). Mr Walker also noted that the Secretary of State had made reference to the further evidence that was before the judge and that the judge had heard oral evidence. Although therefore, Mr Walker did not specifically concede the appeal he did not pursue it with any force.

5. Mr Amgbah for Mr Clarke submitted that the Secretary of State was wrong to have contested as he did in the grounds that there was inadequate evidence from the child's school and the Secretary of State rehearsed the fact that the decision had been delayed so that official evidence could be obtained from the school yet this evidence had not be produced. However, Mr Amgbah submitted that this was not a required document. Mr Clarke has no ongoing relationship with the child's mother and therefore had difficulty obtaining such documents. Mr Amgbah further submitted that the policy guidance states that a letter from the child's mother can be accepted as evidence and the appellant did produce such evidence.

6. Mr Amgbah referred to the respondent's 'Guidance on application of EX.1. – consideration of a child's best interests under the family Rules and in Article 8 claims where the criminality thresholds in paragraph 399 of the Rules do not apply.' This states including as follows in respect of whether there is a genuine and subsisting parental relationship:

> "4. This is a key test under paragraph 399. There must be evidence that there is an active and ongoing relationship. In considering whether the relationship is genuine and subsisting the following factors are likely to be relevant:
>
> **Does the applicant have a parental relationship with a child?**
>
> - What is the relationship – biological, adopted, step-child, legal guardian?
> - Are they the child's de facto primary carer?
>
> **Is it a genuine and subsisting relationship?**
>
> - Does the child live with the person?
> - Where does the applicant live in relation to the child?

- How regularly do they see one another?
- Any relevant court orders governing access to the child?
- Is there any evidence or other relevant information provided with the application – for example, views of the child, other family members or from social worker or other relevant professionals?
- To what extent is the applicant making an active contribution to the child's life. Factors which might prompt closer scrutiny include:
  - there is little or no contact with the child or contact is irregular;
  - Any contact is only recent in nature;
  - support is only financial in nature, there is no contact or emotional or welfare support;
  - the child is largely independent of the person."

7. Mr Amgbah relied on the appellant's oral evidence which the judge accepted. In addition, there were a number of photographs before the First-tier Tribunal which the judge referred to. However, Mr Amgbah pointed out that the judge had not highlighted that each photograph related to the receipts and, for example, showed the appellant and the child at Nandos and at JD Sports.

8. As already noted, Mr Walker did not pursue his own grounds of appeal with any force. It was a matter for the judge what weight he attached to the relevant evidence. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged (which it was not). The judge had the benefit of hearing oral evidence from the appellant and took into consideration that the appellant had previously been granted leave in the UK on the basis of his role in his son's life.

9. Although the respondent had asserted that the evidence, including the letters from the child's mother, were not sufficient, the letter had confirmed that the child was a British citizen and that the appellant had access to the child. That letter was dated 3 December 2017. It confirmed that the appellant was fully involved in the child's life and took the child out and sometimes looked after the child in the mother's absence. It further confirmed that she wanted him to continue to have responsibility to look after the child and be part of the child's life. The child's mother also confirmed that the child was diagnosed with autism at the age of 3 which has affected his development and that the appellant provided support and has continued to provide support over the years to the best of his ability in raising their son; it was the mother's view that it was

important for his father to continue to be part of the routine and that their child has that continuous support from his father as otherwise this could have an effect on the child's mental health due to his special needs. In addition the First-tier Tribunal had before it a letter from the child, indicating that the appellant spends time with him and helps him.

10. is clear that the judge of the First-tier Tribunal took into consideration all of this evidence. The fact that there was not a letter from the school was not fatal to the Tribunal's reasoning. As recorded at paragraph [9] the appellant had been quite candid in stating that his relationship with the child's mother fluctuated and that it was "good" sometimes but that it depended on her mood. The judge took into consideration that there was no evidence from the school but also noted the appellant's evidence that he had never collected this child from school and that his name was not on the child's school's record for contact although he had attended a meeting with the head teacher on an occasion.

11. The First-tier Tribunal considered all the factors, including the best interests of the child, as a primary consideration and that it was normally in the best interests to have the support and care of both parents of a child of school age and in the present appeal no case had been put forward by the child's mother which would indicate that contact was contrary to those best interests. The judge noted, at [24] that there was inadequate evidence from the child's school to indicate a role in the education. Nevertheless it was open to the judge to make the findings he did, that the letters from the mother and the evidence of regular contact including photographs, cinema tickets and most notably in my view, oral evidence from the appellant, 'strongly suggests' the appellant maintains a genuine and subsisting parental relationship with his son.

12. As already noted, it was a significant factor in the judge's findings that the respondent had accepted that the appellant had an ongoing role in his life when he granted leave to remain in 2013. Although I accept that circumstances can change, it was open to the judge to find that they had not for the adequate reasons he gave. I have reminded myself what was said in **MD (Turkey) v SSHD [2017] EWCA Civ 1958** that adequacy meant no more nor less than that. It was not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why she has lost and it is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case there has been an error of approach. No arguable error has been established in the approach of the First-tier Tribunal.

Notice of Decision

13. The decision of the First-tier Tribunal does not therefore contain an error of law, such that it should be set aside, and shall stand. The appeal by the Secretary of State is dismissed.

No anonymity direction is made.

Signed Date: 11 May 2018

Deputy Upper Tribunal Judge Hutchinson