



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/19210/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Newport
On 25 January 2018**

**Decision & Reasons
Promulgated
On 20 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

AMADOU JALLOW
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. Y. Darboe, Toltops Solicitors

For the Respondent: Mr. I. Richards, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Fenoughty, promulgated on 25 September 2017, in which she refused the Appellant's appeal against the Respondent's decision to refuse leave to remain on human rights grounds.

2. Permission to appeal was granted as follows:

"I have read the decision with care and find that the grounds as detailed in

the application are made out. There are clear conflicts in findings on material matters in respect of the relationship between the Appellant and child; the Judge had recorded clearly the evidence at paragraph 34 that the Appellant meets his daughter, takes her to play, etc. but failed to consider the quality of the Appellant's contacts with his daughter. Most importantly the Judge had materially erred by misconstruing distinction between having a parental responsibility and the existence of parental relationship in light of the decision in **RK**. "

3. The Appellant, Miss. Richardson and their daughter attended the hearing. I heard submissions from both representatives following which I reserved my decision.

Submissions

4. Mr. Darboe relied on the grounds of appeal. In addition, with reference to paragraph [54], he asked why the Appellant's daughter would choose to go with the Appellant if there was no parental relationship, and if she was not used to the Appellant. He referred to paragraph [92]. The Judge had made a finding that there was no evidence that the Appellant had taken part in any decisions regarding her upbringing, but no questions had been asked about the Appellant's daughter's upbringing.
5. In response Mr. Richards relied on the Rule 24 response. The Judge had taken full account of the evidence, and had concluded that it was not reliable. She could not rely on the evidence either of the Appellant or of Miss Richardson. He referred to [91]. The Judge accepted the biological relationship. However, having found there to be no reliable evidence of contact with his daughter, the Judge found that the Appellant had not shown that he had a genuine and subsisting parental relationship with her.
6. He referred to the case of RK (s.117B(6); parental relationship) IJR [2016] UKUT 31 (IAC). There had to be an active role taken by an individual in the upbringing of a child. The Judge found that the Appellant was not taking an active role in his daughter's upbringing. In all the circumstances the Judge was entitled to come to her conclusion. She gave adequate reasons in the face of her adverse credibility findings.
7. In response Mr. Darboe submitted that RK showed that, where the biological father existed, it was difficult for anyone else to claim a parental relationship with a child. The Appellant, as a biological parent, had not abdicated responsibility for his child. The Judge had not found that he had abdicated his parental relationship. The Judge relied on the fact that there was only intermittent contact, but she had not considered the quality of the contact. The Judge accepted that the Appellant had taken his daughter to after-school classes, which is what any parent would do. He submitted that the child's mother had attested to what the Appellant did. The child's mother had done what any mother who had the best interests of her child at heart would do, which was to make sure that the best interests of that child were served by having a genuine and subsisting parental relationship with her father.

8. It was not possible to say that the Appellant and his daughter had a relationship but that it was not “parental”. The relationship existed because the Appellant was the parent of his daughter. The decision contained errors of law and could not stand.

Error of law

9. I have carefully considered the decision. There are contradictory findings regarding the Appellant’s relationship with his daughter.

10. At [86] the Judge stated:

“The tribunal did not doubt that the appellant had a relationship with his daughter, and that, since 2014 or 2015, he had had some contact with her, albeit not regular, and only once in the last 11 weeks.”

11. The reason that the Judge found that the Appellant did not satisfy the requirements under the immigration rules is because he did not satisfy the criteria in E-LTRPT.2.4(b). She found that he had not provided evidence that he was taking an active role, or intended to take an active role, in his child’s upbringing. At [87] the Judge stated:

“In the circumstances, the tribunal was not satisfied that the appellant had demonstrated that his relationship with his daughter had sufficient strength and depth to show that he had been taking, or intended to take an active role in his daughter’s upbringing.”

12. The Judge considered the Appellant’s appeal outside the immigration rules, and at [91(i)] states:

“The tribunal accepted that there was a relationship between the appellant and his daughter, but it had not accepted that this amounted to a genuine and subsisting parental relationship, as the evidence did not show that he was actively involved in her upbringing.”

13. The Judge accepted that there was a relationship between the Appellant and his daughter. The reasons she found that this was not a genuine and subsisting parental relationship was because she found that the evidence did not show that he was actively involved in her upbringing.

14. Later at [92] the Judge states:

“In this case, the tribunal has found that the appellant does not have a genuine and subsisting parental relationship with his daughter, as it was not satisfied that he had more than occasional contact with her, and there was no evidence that he had taken part in any of the decisions regarding her upbringing.”

15. Putting aside the question of whether or not the Appellant was asked about decisions taken regarding his daughter’s upbringing, I find that the

Judge has confused the issue of parental relationship with that of parental responsibility. If the Appellant has a relationship with his daughter, which the Judge has found, it is difficult to see what other kind of relationship this can be other than a parental relationship. The Judge has placed further requirements on the Appellant in order to show that it is a genuine and subsisting parental relationship, namely she has required the Appellant to show that he had taken part in the decisions regarding his daughter's upbringing in order to show that he had a genuine and subsisting parental relationship with her.

16. I have considered the case of RK. The headnote states:

"It is not necessary for an individual to have "parental responsibility" in law for there to exist a parental relationship."

17. The Appellant does not have parental responsibility in law, but he has a relationship with his daughter. The Judge acknowledged that he had a relationship with his daughter. She acknowledged that he had contact with his daughter. She found that this contact was not regular, but nevertheless found that there was contact. The Judge's reasons for finding that their relationship does not amount to a genuine and subsisting parental relationship are not good in law. The fact that the contact is occasional does not mean that the parental relationship between the Appellant and his daughter is not genuine and subsisting. Her finding that he had not taken part in decisions regarding his daughter's upbringing goes to the issue of parental responsibility, not parental relationship.

18. The findings of the Judge are confused insofar as she accepted that there was a relationship between a father and daughter, but did not accept that that constituted a genuine and subsisting parental relationship primarily due to the frequency of contact. I find that this is an error of law.

19. Further, at [84] the Judge finds that it would be in the Appellant's daughter's best interests to remain with her mother. She finds that the quality of the child's life would not be seriously impaired if the Appellant were to return to Gambia. She has not considered the extent to which the best interests of the Appellant's daughter are served by maintaining contact with her father. She stated that the evidence showed that the Appellant had contact with his daughter, but she has not given any reasons for her finding that the lack of this contact would seriously impair her quality of life.

20. I find that these errors are material, as they go to the issue at the centre of the appeal.

21. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2 which contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. I have carefully considered whether this appeal could be remade by me on the

basis of the findings of the First-tier Tribunal. However, given that these findings are confused and contradictory, and given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Decision

22. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside. No findings are preserved.
23. The appeal is remitted to the First-tier Tribunal for rehearing.
24. The appeal is not to be listed before Judge Fenoughty.

Signed

Date 12 February 2018

Deputy Upper Tribunal Judge Chamberlain