



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03184/2016

THE IMMIGRATION ACTS

Heard at Field House
On 15 October 2019

Decision & Reasons Promulgated
On 17 October 2019

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

M A
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of her family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the Appellant: Ms S Mardner, Counsel, instructed by Nasim & Co Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the remaking of the decision in the Appellant's appeal following my error of law decision, promulgated on 20 March 2019, in which I concluded that the First-tier Tribunal had proceeded on a factually mistaken basis when dismissing the appeal at first instance. In summary, the judge had, through no fault of his own, been unaware of the fact that the Applicant's son's father had been granted indefinite leave to remain, with the effect that the son could be registered as a British citizen.
2. An application for registration had been made after the judge's decision and before the error of law hearing. I issued directions to the Appellant, requiring additional information about the progress of the son's application. Under cover of letter dated 13 August 2019, the Appellant provided relevant evidence to show that her son had in fact been registered as a British citizen on 28 June 2019. As a consequence, I issued further directions in the following terms:
 - 1) Given the registration of the Appellant's son as a British citizen, the Respondent shall confirm in writing her position in this appeal;
 - 2) The written position statement shall be filed with the Upper Tribunal and served on the Appellant no later than 21 days from the date this Directions Notice is sent out;
 - 3) If the Respondent's position has the effect that an oral hearing of this appeal is no longer necessary, this is to be clearly stated in the written position statement.
3. Unfortunately, and without explanation, the Respondent has failed to comply with these directions. I make it clear that this failure is in no way the fault of Ms Everett.

The hearing

4. At the outset, Ms Everett apologised on behalf of the Respondent for the non-compliance with my previous directions. She accepted the fact of the Appellant's son's registration as a British citizen and confirmed that this event did not constitute a "new matter" for the purposes of section 85 of the Nationality, Immigration and Asylum Act 2002, as amended.
5. Ms Everett then confirmed that she was not opposing the Appellant's appeal, and in light of the son's registration as a British citizen, the Appellant was entitled to succeed on the basis of section 117B(6) of the 2002 Act because it would not, in all the circumstances, be reasonable to expect her son to leave the United Kingdom.

The remake decision

6. In the circumstances, I shall state my decision briefly.
7. It is common ground that the Appellant has a genuine and subsisting parental relationship with her son. It is now also agreed that the son is a British citizen.

8. In this particular case, the Respondent has taken the position that it would not be reasonable for the Appellant's son to leave the United Kingdom. That is a considered view, and there is no sound basis upon which to go behind it.
9. As a consequence, all the constituent elements of section 117B(6) are satisfied. It follows that the Appellant is entitled to succeed on Article 8 grounds.

Costs

10. At the hearing, Ms Mardner indicated that those instructing her may wish to make an application for the costs of the hearing. She confirmed that if such an application were made, it would be on the basis of the Respondent's failure to comply with my previous directions and the unnecessary costs incurred by attending the hearing.
11. I gave the following oral directions at the hearing:
 - 1) Any application by the Appellant for costs was to be made no later than 4pm on 21 October 2019;
 - 2) The Respondent was to respond to any application no later than 4pm on 4 November 2019.

Anonymity

12. I continue the anonymity direction that I made in respect of the error of law decision. This direction is in place so as to protect the identity of the Appellant's son.

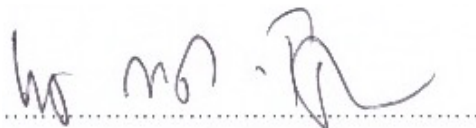
Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal has been set aside.

I remake the decision by allowing the appeal.

Signed

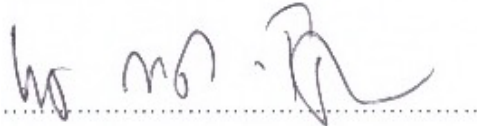


Date: 15 October 2019

Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make to make a reduced fee award of £100.00. I have reduced the award because the Appellant has succeeded in her appeal on the basis that did not apply at the time human rights claim was made to the Respondent.

A handwritten signature in black ink, appearing to read 'Ms M. Norton-Taylor', written over a horizontal dotted line.

Signed

Date: 15 October 2019

Upper Tribunal Judge Norton-Taylor

ANNEX: ERROR OF LAW DECISION



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/03184/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 4 March 2019**

Decision & Reasons Promulgated

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Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**M A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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 their 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.

Representation:

For the Appellant: Mr D Gibson-Lee, Counsel, instructed by Nasim & Co Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge Oliver (the judge), promulgated on 7 January 2019, by which he dismissed her appeal against the Respondent's refusal of her human rights claim.
2. The Appellant's case was based primarily on her son's situation in this country. Her son, a Ghanaian national like herself, had been born in March 2013.

The judge's decision

3. On the basis of the evidence before him, the judge concluded that the son had no independent right to remain in this country. The judge also concluded that the son's father apparently had no status here, or, at is highest, had only limited leave to remain. The father was not, as at the date of the hearing, playing an active role in the child's life.
4. Applying the Article 8-related Rules and then the wider Article 8 approach, the judge concluded that the Appellant's son was not a qualifying child for the purposes of paragraph 276ADE(1)(iv) of the Immigration Rules or section 117B(6) of the Nationality, Immigration and Asylum Act 2002. Having considered the child's best interests, the judge found that both the Appellant and her son could leave the United Kingdom and that there would be no breach of Article 8.

The grounds of appeal and grant of permission

5. The grounds of appeal assert that the judge laboured under a misapprehension as to the true factual position of the son's father. It was said that he had in fact been granted indefinite leave to remain in the United Kingdom on 19 March 2018.
6. The grounds assert that documentary evidence confirming this was attached however it became clear at the hearing before me that this does not seem to have been the case.
7. In any event permission to appeal was granted by First-tier Tribunal Judge Pickup on 21 January 2019.

The hearing before me

8. At the hearing before me, Mr Gibson-Lee provided myself and Mr Bramble with a letter from the London Borough of Redbridge, dated 18 February 2019, apparently confirming the grant of indefinite leave to remain to the child's father on the date set out previously. Mr Bramble helpfully went away and checked the Respondent's own database and was able to confirm that this information was indeed correct.

9. There is no evidence to suggest that either the Appellant or her representatives knew of the grant to the father.
10. In light of the foregoing there was an error by the judge as to what is now accepted as being an uncontroversial matter of fact, namely that the child's father had, from March 2018, indefinite leave to remain in this country. The core issue arising is whether this error of fact was material to the outcome of the Appellant's appeal.

Decision on error of law

11. Having heard from both representatives, I am satisfied that the error of fact amounts to a material error of law.
12. It is by no means certain that the outcome would have been different had the judge been aware of the true factual situation relating to the child's father. However, that is not the test to be applied. In my view there is a sufficiently realistic prospect that the outcome could have been different. This is so for the following reasons.
13. I am unclear as to why the information about the child's father had not been provided by the Respondent prior to the hearing, or indeed at the hearing, although I am in no way suggesting any deliberate withholding of information. However, it is a fact that this information had not been disclosed.
14. If the judge had been aware of this, it is quite possible that he would either have adjourned the hearing on application by the Appellant (which, as Mr Gibson-Lee informed me having sought instructions, would have been made at the time) or of his own volition in order for a possible application for registration as a British citizen to have been made on the child's behalf, or at least to have taken this possibility into account as part and parcel of his Article 8 assessment, which of course included the best interests of the child.
15. Assuming that the matter would have proceeded without an adjournment, I am satisfied that the fact this child would have had the ability to make an application for registration (which of itself would have had an important impact on his status in this country) constituted a relevant consideration that the judge would have been bound to take into account. That does not mean that it would have in any way been a decisive factor, but in my view, it cannot properly be said that this simply could not have materially affected the outcome of the Appellant's appeal.
16. In these circumstances there is a material error and I set the judge's decision aside.

Disposal

17. In terms of disposal, given the narrow issue on which I have decided the error of law point, this case can be retained in the Upper Tribunal and a remaking decision made in due course at a resumed hearing before me. I appreciate that some time will be needed for relisting in light of the fact that an application for registration as a British

citizen has been made on 26 February 2019 and received by the Respondent two days later.

18. I will issue directions in order to progress matters.

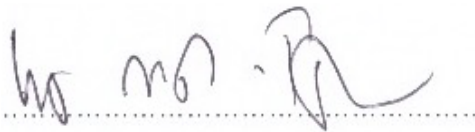
Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and I set it aside.

I adjourn this appeal for a resumed hearing before me in due course.

Directions to the parties

1. This appeal will be listed for a case management hearing before me in 3 months' time;
2. The Appellant's representatives are under an ongoing obligation to keep the Upper Tribunal and Respondent informed of any changes to the Appellant's circumstances (including those of her son) which may have a material bearing on this appeal.



Signed

Date: 18 March 2019

Deputy Upper Tribunal Judge Norton-Taylor