



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05743/2018

THE IMMIGRATION ACTS

Heard at Birmingham CJC
On 17th May 2019

Decision & Reasons Promulgated
On 03rd June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR MOHAMMED [H]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mozam (Solicitor)
For the Respondent: Mr C Williams (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Jessica Pacey, promulgated on 2nd August 2018, following a hearing at Nottingham Justice Centre

on 23rd July 2018. In the decision, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, and was born on 6th June 1972. He appealed against the decision of the Respondent dated 12th February 2018, refusing his application for leave to remain in the UK on the basis of his family life.

The Appellant's Claim

3. The essence of the Appellant's claim is that he has a family life with his children, one born on 7th January 2000, and the other born on 17th August 2011, both of whom are his daughters, whom he sees at weekends. His daughters, however, live with their mother. It is he who provides them with financial support. He himself had come to the UK in November 2000 and was then granted leave to remain as a spouse until 12th September 2005. Further applications for permission to remain were rejected until his application for leave to remain on human rights grounds was granted until 19th March 2017. The Appellant claims that he plays an active role in the daughters' lives and contributes financially.

The Judge's Findings

4. The judge heard evidence from the Appellant's brother, Mr [R], and he heard evidence from Mr [Q]. The judge did not find the evidence of either to be plausible (see paragraphs 42 to 44). The judge did not have evidence at the hearing from the Appellant's daughters who did not attend and did not find credible the reasons for their not attending.
5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge had failed to begin from the starting point that the Appellant previously had been granted leave to remain in the UK on the basis of his family life with his children. The Home Office had accepted this evidence. The evidence also showed that the Appellant had met the children at various different times and there were photographs in the bundle of the Appellant with his children. In the circumstances, the starting point had been overlooked by the judge. Second, the judge failed to find that the witness statement signed by the Appellant's daughter, stated that her father had an active role in her life. No weight was given by the judge to this statement.
7. On 17th September 2018 permission to appeal was granted by the Tribunal on the basis that the judge's conclusion that the parental relationship between the Appellant and his younger daughter had not been shown (see paragraph 51) and that he did

not play an active role in her upbringing (paragraph 45) may have been in error in that it ignored the materiality of evidence before the Tribunal.

Submissions

8. At the hearing before me on 17th May 2019, Mr Mozam, appearing on behalf of the Appellant, furnished a well-compiled skeleton argument, which he used as the basis of his submissions before the Tribunal. He began by asserting that the starting point of the consideration by the judge of this appeal should have been that the Appellant had already been recognised as a family member, with leave being granted to remain here on this basis, on a previous occasion. Those facts had not changed.
9. Second, against that background, the judge's finding (at paragraph 45) that the Appellant did not have access to his youngest daughter was not properly made out. The Appellant provided firm views which set out his contact with his daughter and photographs at various times which shows him being with his daughter. The Appellant provided two statements: one with the application and another subsequently demonstrating the active role that he played in the lives of his daughters.
10. Third, notwithstanding the evidence of photographs, phone calls, and the Home Office previously having accepted the contact of the Appellant with his daughter, the judge concluded that the Appellant did not have direct contact with his daughter.
11. Fourth, the judge stated (at paragraph 45) that "I am not satisfied ... that the Appellant has access to his daughter since" and this seemed to indicate that the Appellant did have access to the child before, but did not subsequently, but the sentence is an inconclusive one. The judge had not made the finding that the Appellant was granted leave on the basis of family life previously.
12. Fifth, the judge rejected the Appellant's claim on the basis of credibility (at paragraphs 35 to 38). It was not credible that a father would drive his child to school, spend the weekend with the child without a court order, for reasons that are not made out.
13. Finally, the judge did not give sufficient weight to the daughter's evidence in her witness statement that the parents were not on good terms at the moment and the Appellant did not want to cause any difficulties for the daughter by requiring her to attend court to give evidence in support of him. The Appellant's evidence was that if the mother found out about this she would have an argument with the daughters and make life difficult for them. The judge misconstrued this evidence. There was no evidence from the mother that she had prevented the daughter from giving evidence or was hostile to the daughter attending. The judge's reasons (at paragraphs 35 to 38) did not factor this in.
14. For his part, Mr Williams submitted that firstly, it was not true that the judge had not proceeded on the basis that there had been a previous grant of leave to remain to the Appellant on the basis of his family life. Second, the judge, had reviewed the

evidence before him, was clear that the Appellant “has not provided evidence that he is taking, and intends to continue to take, an active role in ‘the daughters’ upbringing” (paragraph 45). Third, with respect to the photographic evidence, it was simply not true that the judge had failed to take this into account (see page 62 of the Appellant’s bundle). In fact, if one looks at the photographic evidence, it ranges across the years from when the daughters were less than 5 years old, and are being fed by the Appellant as their father, to when they were about 10 years old, and to when they are seen to be holding an old £10 note. Whatever may have been the position in the past, and it is clear that permission to remain had been granted to the Appellant on the basis of family life in the past, that was not the position now. The judge was not satisfied that the daughter was being driven by the Appellant to her college. The judge was not satisfied that the Appellant took the daughter to the dentist. The daughters themselves do not say in their witness statement that their father picked them up from school every day.

15. In reply, Mr Mozam submitted that there was actual evidence from the dentist’s surgery himself that the father had accompanied the daughters to the dentist. The photographs, by the mere fact that they showed a range of years, demonstrated the extent of the Appellant’s involvement in their lives.

No Error of Law

16. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007), such that I should set aside the decision and remake the decision. My reasons are as follows.
17. First, it is not the case that the judge is unaware of the basis upon which the previous grant of leave to remain was given to the Appellant. The judge states at the outset that, after the Appellant’s leave to remain as a spouse expired on 12th September 2005 that, “Further applications for leave were rejected until his application for leave to remain on human rights grounds was granted until 19th March 2017” (see paragraph 4).
18. Second, just because there had been a previous grant of leave to remain in 2017, on the basis of the Appellant’s involvement in the lives of his daughters, did not mean that upon a subsequent fresh application being made, that the facts do not have to be proven to that effect again. The judge looked at the facts as they were before the Tribunal on this occasion. The judge concluded that they were not what they were in the past. The judge gave reasons for this. For example, the evidence from Mr [R] was that the Appellant’s mother drove her to school because there was no school bus and they did not like it. The judge concluded, “I do not consider it credible that there is no means of reaching school other than by car. In any event it is not Bemrose school but college which the daughters attend”. Indeed, the judge went on to say that “it is in my view in the highest degree unlikely that the daughters, who live in Derby, not in an isolated village, are unable to reach their college save by having their father drive them” (paragraph 43).

19. In the same way, whilst I accept that there is a letter from one of the daughter's dentists, dated 4th July 2018, which states that "the Appellant attended the dentist with her on three occasions in 2016 and 2017" (see the judge's decision at paragraph 18), the judge is fully aware of this evidence and sets it out, but the judge's evaluation of this evidence is that, "There is no evidence that either daughter has dental problems so it is reasonable to suppose that the only dentist appointments they have are regular six months check-up" and in fact a letter from one of the daughter's dentists refers to one appointment in 2016 and two in 2017, and there is no evidence that the other daughter ever goes to the dentist, whether accompanied or not (paragraph 33).
20. The reason why all of this is important is because what the Appellant has to show is that he plays an active role in the daughters' lives. The Appellant's evidence, which the judge sets out is that he picked them up from their school every day and took them to, and picked them up from school. He also took them to any appointments they had. He provided financially for the daughters. He gave them money for clothes. Moreover, "His daughters needed him around and they heavily relied on him" (see paragraph 9 of the decision). The daughters themselves did not attend court to give evidence. The explanation for this, as confirmed by Mr Mozam before me today, is that the Appellant as the father, did not wish to create any friction between his daughters and their mother, with whom he was not on good terms at present.
21. However, the judge deals with this and states that the evidence from the Appellant was that the daughters' "mother had no issues with his meeting the children and was happy he was taking responsibility" and that therefore, "if this is true, then it is unclear why the mother would resist her daughters' supporting their father's appeal ..." (paragraph 41). Accordingly, the judge's conclusion that, "the Appellant does not have any great degree of involvement in [his daughter's] life, the decision is not disproportionate" (paragraph 50) is also correct under Article 8. The judge gave ample reasons, in a comprehensive decision, why the appeal could not succeed. The judge was entitled to come to the conclusions that she did. There is no error of law.

Notice of Decision

22. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand.
23. No anonymity direction made.
24. The appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

29th May 2019

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Juss

29th May 2019