Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/15006/2018

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 5 August 2019	**On 14 August 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

DARIA [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Holt, Counsel instructed by Paragon Law
For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a citizen of Iraq, has permission to challenge the decision of Judge Kaler of the First-tier Tribunal (FtT) posted on 14 January 2019 dismissing his appeal against the decision made by the respondent on 2 July 2018 refusing him leave to remain. The appellant had applied for leave to remain on the basis of his being in a parental relationship with two British citizen children.

2. The focus of the appellant's grounds is what the judge stated at paragraphs 18-21:

"18. There is a distinct lack of evidence as to how frequently the Appellant sees his children or how often they come to stay at his place. I am not told when the last occasion was; it could have been many years ago. Whilst the mother of the children and her relatives provided statements for the applications in 2012 and 2015, they have not provided supporting statements for the present application. The photographs produced by the Appellant were taken on numerous occasions in 2013. There are two occasions when they were taken in 2014, none in 2015, one in 2016, one in 2017 and several in 2018. Some of them also show [MT].

19. The evidence suggests that the Appellant and [M] are not getting on together at the moment. The Appellant says that her family members have tried to intervene to improve the situation, but there are no statements from them as to the regularity of any access between the Appellant and his children or what impact he has on their lives at present. There is nothing from their school or their grandmother (who is their legal guardian) to indicate what impact removal of the Appellant would have on their lives. There are no reports from social workers or anyone else who plays a significant role in their lives. The previous applications were supported by evidence from the people these children live with; this application is not.

20. I accept that the Appellant has qualifying children in the UK. They were born here and are British citizens. He does not have a subsisting relationship with their mother. He has had leave to remain in the UK, and so any relationship that has been developed with the children has been with leave since 2012. I know little of his private life: he lives in rented accommodation, he is in receipt of benefits, he sees his children and takes them out, he also sees them at their homes at times. There is no evidence about the frequency of his contact with them and no direct evidence of what impact his removal would have on them. The Appellant has submitted articles stating how important a father's role is in the lives of children but these are not specific to the Appellant. I have no evidence of how significant a role he plays in their lives. He does not have any school reports about them. He said he is trying to play a more active role in their lives but he does not have CBT clearance; I see no evidence of his having applied for such clearance. He has not been appointed next of kin for the children. He says he wishes to take legal action about regularising his role with the children but he has not taken any active steps.

21. Whilst I accept that the Appellant has two children who are British citizens, I do not find that he plays any significant role in their lives. He does not have parental responsibility for them. Their needs are being met by their mother and grandmother. I have little evidence of the impact the Appellant has on their lives and wellbeing. I am not persuaded that the absence of the Appellant would have a significant impact on the well-being of these children. It has not been demonstrated that the best interest of the children require that the Appellant be given leave to remain in

> the UK. He has not shown that he has a genuine and subsisting relationship with the children."

3. Ground 1 asserts that the judge's findings of no evidence of recent contact with the children failed to take account of (i) the letter dated 25 June 2018 from the mother of the appellant's children; and (ii) the letter from [Mr BH], dated 8 May 2018, the appellant's landlord, noting a recent visit made by the appellant to the home of his children and stating that the appellant is "closely involved with his sons".

4. Ground 2 alleges that in finding at paragraph 20 that the appellant "sees his children and takes them out, he also sees them at their home at times" and at paragraph 18 that "I am not told when the last occasion was; it could have been many years ago" the judge fell into contradiction betraying a lack of adequate reasons.

5. I am persuaded the judge erred in law.

6. Whilst the judge did refer descriptively to the letter from Mr [H] at paragraphs 3 and 5, the judge's subsequent findings fail to indicate that he took this letter into account. The judge stated at paragraph 18 that "I am not told when the last occasion [the appellant has seen his children]; it could have been many years ago". In so finding either the judge forgot about this letter or failed to explain why he decided to attach any weight to it.

7. The judge's statement that there was no evidence of recent contact is also at odds with his apparent finding at paragraph 20 that [in the present tense] "he sees his children and takes them out, he also sees them at their home at times".

8. The judge's treatment of the issue of contact with the children is further undermined by his failure make any mention of the letter from the children's mother dated 25 June 2018. Indeed, in view of the fact that this letter was before the judge, the judge's statement at paragraph 18 that "the mother of the children and her relatives … have not provided supporting statements for the present application" is incorrect. If by this the judge meant only to refer to the documents submitted with the appellant's application, that leaves the problem that the judge makes no reference to it at all.

9. I consider the judge's errors in respect of the evidence relating to the appellant's contact with his children were plainly material inasmuch as I cannot exclude that if he had taken proper account of them it may have made a difference to his assessment of parental responsibility.

10. For the above reasons I set aside the decision of the judge for material error of law and remit the case to the FtT.

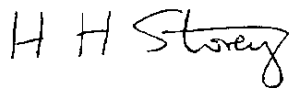
11. None of this is to suggest that the appellant is entitled to succeed on the merits of his appeal; that must be entirely a matter for the judge. In order to assist the judge, I make the following direction:

    Direction

    That the appellant's representatives produce to the First-tier Tribunal, with a copy to the respondent, within eight weeks of this decision being sent, a social welfare report on the appellant's two children focussing on the nature and extent of the appellant's contact with his children since the appellant and the children's mother ceased living together up to the present. If the appellant's representatives encounter difficulties in obtaining such a report (e.g. because of private funding difficulties or if the mother should not consent to such a report) they are to notify the FtT forthwith and it may be that a CMR will be held to ascertain what other avenues could be provided to obtain better information about the circumstances of the children and their relationship with the appellant.

12. No anonymity direction is made.

Signed Date: 7 August 2019



Dr H H Storey
Judge of the Upper Tribunal