



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

Appeal Number: PA/10956/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 15 March 2019**

**Decision & Reasons
Promulgated
On 02 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MR O I
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lambs of Counsel

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Judge M R Oliver (the judge) dismissed the appellant's appeal against the respondent's refusal to grant him asylum, humanitarian protection and on human right's grounds.

2. The grounds claim the judge failed properly to apply Appendix FM, failed to make necessary findings of fact and failed to decide family life. I will address them in turn:

Failed Properly to Apply Appendix FM

3. The judge in concluding that there was no family life between the Appellant on the one hand and the appellant's partner and her daughter on the other hand, had not correctly applied the law nor did he make appropriate findings on the evidence before him.

Failed to Make Necessary Findings of Fact

4. The judge had supporting evidence regarding the relationship between the appellant and his stepdaughter including a statement from her and evidence from her mother, the appellant's partner. In reaching a conclusion that there was not a strong enough relationship between the appellant and the child, the judge failed to make findings upon the evidence of both mother and daughter about that relationship. He did not explicitly either accept or reject that evidence which amounted to a material error of law.
5. The judge rejected in large part, the appellant's evidence as not being credible but that did not mean he should have not made findings on the partner's and daughter's evidence, which was essential for the Article 8 consideration.
6. The judge failed to make findings on the general evidence of the appellant and his partner that they were cohabiting, instead only making findings on the basis of the council tax evidence.

Failed to Decide Family Life

7. The judge did not correctly apply the findings he made to the facts and conclude whether or not there was protected Article 8, family or private life.
8. Judge Gibb granted permission on 11 February 2019. He said inter alia:
"2. The grounds which were in time, complain that the judge erred in:
 - (1) finding that there was no family life between the appellant, his partner and his stepdaughter, without assessing the evidence of the partner and the child;*
 - (2) limiting his consideration of cohabitation to council tax evidence only; and*
 - (3) not considering on the facts as found whether there was family and/or private life.*

(4) *The grounds are arguable. The judge's consideration of the family life aspect was brief ([26 - 27]) and the reasoning was limited as a result. It is arguable that relevant evidence was not assessed, particularly since the appellant's partner gave oral evidence, and the possibility that she was falsely claiming the allowance but in fact was living with the appellant does not appear to have been considered (witnesses may lie about certain matters but nevertheless be truthful about others). From the last sentence of [27] it may also be arguable that there was no Article 8 proportionality assessment conducted following a pre-**Agyarko v Secretary of State [2017] UKSC 11** approach."*

9. The respondent filed and served a Rule 24 response on 12 March 2019. The respondent submitted that the judge directed himself appropriately. He said inter alia as follows:

".....the grounds of appeal are utterly unmeritorious and simply argue that the FTTJ could have found the appellant credible in respect of his relationship. The fact that he could have found the appellant to be in a genuine relationship does not mean it was not open for him to find it was not.

4. *The grounds do not challenge the negative asylum finding and are therefore presumably content that it was open for the FTTJ to find the appellant not to be credible. That is a factor of clear relevance when assessing the alleged relationship.*
5. *In addition the FTTJ has found that despite claiming to live together the appellant's alleged partner claims the single occupancy reduction on council tax. The only 'credible' explanation for this was that the appellant and his spouse were defrauding the local authority to pay less council tax, in which case it hardly supports the premise that the Immigration Judge has ignored potentially credible evidence."*

Submission on Error of Law

10. Mr Lambs handed up a skeleton argument at the hearing which I have considered. He submitted that there was a clear lack of assessment of the evidence before the judge relating to the relationship between the appellant and his partner and stepdaughter.
11. Mr Lambs said that the judge was unclear as to exactly what he meant in saying that if the evidence before him meant anything, it was that the

appellant did not live with his claimed partner. There was no assessment or no proper assessment of the evidence supporting a family life.

12. Mr Tufan submitted that the judge was entitled to make the findings he did. The appellant and his partner could not come within the Rules. At the time of the application they had not been cohabiting for two years. The judge's finding was that they were not cohabiting. In the event that what the appellant's partner had been telling the local authority was true, the appellant could make a new application under EEA Rules.

Conclusion on Error of Law

13. The judge found the appellant to be wholly incredible with regard to his asylum claim. That decision was not challenged. The evidence before the judge regarding the appellant's relationship with [ZA] was contradictory. The appellant would have the judge accept that they lived together. See [15] of the decision. The evidence of [ZA] did not corroborate the appellant's claim to be living with her. The judge said inter alia at [21] with regard to Ms [A]'s evidence:

"She confirmed she still received a discount for living as a single adult. When she was pressed on this, she explained that she had been asked if he lived with her, but he was staying with her rather than living with her."

14. The judge clearly took account of all of the evidence put before him with regard to the claimed relationship. The appellant said he moved in with Ms [A] in November 2016. If that was true then she had been carrying out a fraud upon the local authority since that time. In cross-examination, she said he was staying with her rather than living with her. On the one hand, the appellant was claiming he should be granted leave to remain because of his genuine and subsisting relationship with his partner, but on the other hand, she was saying that he only stayed with her and did not live with her. In those circumstances, the judge was perfectly entitled to come to the decision that they were not cohabiting. The judge took into account so far as he was able to in the light of the widespread adverse credibility findings and inconsistencies, that the appellant played some part in the life of his partner's child. The appellant had claimed to be bringing the child up but given the judge's finding that they did not live together, he was entitled to reach his conclusion that he did not have a genuine and subsisting parental role. See [27].

Decision

15. The judge's decision contains no error of law and shall stand.

Anonymity direction continued.

Signed

Date 28 March 2019

Deputy Upper Tribunal Judge Peart