



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

Appeal Number: PA/00190/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 November 2020**

**Decision & Reasons  
Promulgated  
On 4 February 2021**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**M B  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Tawiah, Counsel instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is no longer a protection claim. The live issue in the appeal concerns the Appellant's relationship with a young person and although the details are not shaming or distressing, I see no reason why she should be identified. I have identified her only by initials in the Decision and Reasons and, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the young person "A". Breach of this order can be

punished as a contempt of court. I make this order because I see no legitimate public interest in "A"'s identity.

2. This is an appeal against a decision of the First-tier Tribunal dismissing the appellant's appeal against a decision of the respondent on 23 December 2019 refusing him asylum, humanitarian protection and leave to remain on human rights grounds.
3. Although the decision of the First-tier Tribunal was the subject of an extensive wide-ranging challenge permission was granted on one point only by Upper Tribunal Judge O'Callaghan who said under the heading "Ground 3":

"I observe that evidence as to the appellant's relationship with the 16 year old daughter of his partner is limited to a brief reference in Ms I's letter dated 21 January 2020 and a brief reference at paragraph 15 of the appellant's witness statement, dated 29 January 2020. It is understood that the daughter was attending school at the date of the hearing before the Judge. No evidence was presented on behalf of the daughter, and like her mother she did not attend the hearing. However, the evidence before the Judge details that the daughter resides with the appellant, is close to him and is a British citizen (though no evidence of citizenship is identified within the appellant's bundle). In the circumstances it is arguable that the Judge erred in concluding that the appellant enjoys no genuine and/or subsisting relationship with his partner's daughter and that the claimed relationship is incapable of constituting a family life for the purpose of Article 8. The appellant will be expected to address the materiality of such purported error".

4. The appellant has made other applications for leave to remain in the United Kingdom. In a decision promulgated on 23 August 2018 First-tier Tribunal Judge Blundell (as he then was) dismissed the appellant's appeal against a decision refusing him leave to remain on human rights grounds. The appellant was not represented at the hearing and had expressed dissatisfaction at the quality of advice he had received from solicitors who had been instructed. There was reference in that evidence to the appellant's relationship with Ms I and Ms I's daughter. Judge Blundell said at paragraph 35 of his decision:

"Insofar as the appellant relies on a relationship with Ms I, however, the burden is also on him to demonstrate that this is a genuine relationship and that Article 8 ECHR is engaged. On the basis of the evidence before me, I do not accept that the appellant has discharged that burden. He spoke with some affection about Ms I and her teenage daughter but there is no documentary evidence before me about that relationship. I have taken the biodata above from the biodata page of her passport, a copy of which I was given, but there is no other evidence to show that there is a genuine and subsisting relationship which engages Article 8 ECHR. Ms I did not attend the hearing. There was no documentary evidence of cohabitation and no documentary evidence of the relationship that the appellant is said to enjoy with Ms I's teenage daughter. I should be clear; I do not make a finding that the relationship is a false one but simply that the appellant has not discharged the burden of showing that any such relationship exists".

5. The application leading to the present appeal began as an asylum claim. I considered the evidence adduced by the appellant in support of that claim. I

am concerned presently solely with the appellant's relationship with his partner's daughter. I find nothing in the screening interview that illuminates that, neither do I find that surprising. The statement supporting the claim was dated 26 November 2019 and is described as a statement in support of an application for asylum. At paragraph 42 the appellant made reference to his partner Ms I. He said they started to cohabit in May 2017. He said:

"I met A when she was 13 years. I am her stepfather and role model. We get on very well. Although it could have been difficult for me to come into her life at such a formative age, it has worked very smoothly. I have a strong family bond. I help her with her homework, take her to church, etc."

6. He was interviewed about the application. He repeated his claim that he had a partner in the United Kingdom. He said that the relationship developed about two months after they met. The relationship had now last for three years and they cohabited.
7. He talked about his partner's then 16 year old daughter. He repeated his claim to have met her when she was aged 13 and claimed to take care of her. He helped her with her homework and they watched television in the evening, spent time together shopping, going to parties and weddings, family engagements, on Sundays and sometimes they went to church together.
8. He was asked directly at question 21 what role he played in his "stepdaughter's" life. He said:
 

"I help her do her homework, to do domestic I help her with her schoolwork her assignments right now she has started studying for her GCSEs so I help her with English I get her homework and assignments we just bought a English practice book for her I helped her to go through that her reading and comprehension ability I try to help her develop it. Church we go to church not all the time but sometimes we go together. We always fight about her room so I am a role model to her she is a good kid and we get on well I make sure I am aware of her movements at all times I KNOW WHERE SHE IS when she goes to school, and when she comes back she met me at my home it's part of making sure she does not go astray and I also attend the school meetings when they ask parents to go to the school, when her mum is not available I go in there".
9. He said that his daughter attended a particular school which he named, and that he believed her birthday was 29 October. The passport has been produced since and shows the birthday as 27 October.
10. He explained that his partner had two children, both daughters. He claimed a "fantastic" relationship with A, referred again to being a role model in the house and helping her groom and helping her in schoolwork, counselling her and encouraging her. The other daughter was an adult aged about 26. She lived independently but they talk to each other although he described her as "a bit difficult".
11. The reasons for refusal given by the Secretary of State are not helpful. At paragraph 66 the respondent said:

"You further state that you have a parental relationship with your partner's daughters A1 and A. You claim to have active involvement in A's life by assisting with homework and studying for her GCSE's. You attend school meetings when her mother is unavailable and church together. You claim to be aware of her

whereabouts at all time (AIR, Q15, 21). Consideration has been given to this, however as you have failed to demonstrate that you have sole responsibility for the children, it is considered that you fail to meet the requirements of R-LTRPT with reference to paragraph 6 of the Immigration Rules”.

12. Nothing turns on this but I am not satisfied that the appellant ever claimed to have a parental relationship with A1.
13. Paragraph 6 of the rules is the definition section but the word “parent” is not defined there. Rather, examples are given of what a parent can be. I do not understand the reference to “sole responsibility”. The appellant has to prepare his case in light of the Secretary of State’s reasons for refusing the application and it is helpful for the appellant to understand what the Secretary of State found unsatisfactory in the application that had been made. The use of the phrase “sole responsibility” suggests to me that the Secretary of State was thinking of a different rule.
14. In his statement supporting his appeal dated 29 January 2020 the appellant dealt with his private and family life in the United Kingdom. He referred to his relationship with his partner, which has been accepted, and to her having two children, one of them a minor who he described as “my own daughter”. He referred to their “very strong bond”.
15. There was a letter serving as a statement from the partner. She referred to her daughter as a 16 year old schoolgirl and said:
 

“I am her primary carer, supported by my partner”. She then referred to the appellant being a “Pillar of support to me and my daughter whom he assists a great deal with her studies as she prepares for her GCSEs next year, as well as mentoring her while I go to work twelve hours, three or sometimes four days a week. He attends parents’ school meetings on my behalf”.
16. She went on to explain how they attend church together sometimes and said:
 

“a strong bond now exists between them and I cannot imagine the devastation his leaving would have on my daughter and obviously me”.
17. The First-tier Tribunal Judge was clearly aware of that letter and its potential benefit to the appellant but the partner did not attend and the Judge was not impressed by that evidence. There was an explanation from the partner for her absence. She is studying for a nursing qualification and claimed that she had to attend a course event. There was no evidence from the course managers to say that the partner had to attend on that particular occasion and there had been no application to adjourn to a different time. The appellant’s partner had not attended the hearing before Judge Blundell.
18. At paragraph 100 of the Decision and Reasons the judge said:
 

“In the absence of any evidence from Ms I’s 16 year old daughter, namely [A], I am unable to establish that the appellant has a genuine and/or subsisting relationship with his partner’s daughter from a previous relationship. Accordingly, I find his claimed relationship is incapable of constituting a family life within the meaning of Article 8(1), for want of evidence”.
19. Elsewhere the judge noted how there had been reference to the “strong bond” between the appellant and A but the judge also said “there is conspicuously no evidence from A to support this”.

20. Mr Tawiah produced a skeleton argument which I found very helpful. With conspicuous correctness he limited himself to the ground on which permission had been granted.
21. He described the judge's failure to "recognise the genuine and subsisting relationship between the appellant and A" as a "perverse finding".
22. As he rightly pointed out, this is a matter of considerable importance because if there is genuine and subsisting parental relationship with a qualifying child the public interest does not require the appellant's removal. The skeleton argument reminds me, correctly, that a parental relationship can exist between people who are not biologically related and the circumstances have to be considered on a case by case basis. This is supported by the decision of the Tribunal in **R (on the application of RK) v SSHD (s.117B(6); "parental relationship" (IJR) [2016] UKUT 31** although I do not regard this as the kind of proposition that really needs authority. It is, with respect, clearly right.
23. I have indicated above that the Secretary of State's refusal letter was not particularly helpful in the sense that the reasoning was hard to follow but it is abundantly clear that the Secretary of State was not satisfied that there was a parental relationship or something close to it for the purposes of Article 8. It should have been apparent therefore to the appellant, who this time seems entirely satisfied with the quality of the legal representation, that if he needed to rely on that relationship it was something he was going to have to prove.
24. Taken in isolation the judge's consideration of the evidence could lead to the suggestion that he required supporting evidence from the child. That would have been a very dangerous approach. Children are not encouraged to give evidence in matters of that kind because it can be very traumatic for them to give evidence at all or because they can be given an unjustified and overwhelming sense of failure if the decision goes against their declared wishes. Each case must be decided on its own circumstances. Some children would feel that they had not been taken seriously if their evidence was not allowed. However, the judge's loose remark needs to be seen in context. The context was that the appellant knew that he had a burden to discharge. He gave his own evidence which I consider below and he relied upon supporting evidence from his partner who did not attend and gave a very weak explanation for not attending. The judge could not put much weight on that evidence when determining a controversial point. The appellant has shown himself to be an unsatisfactory witness in a variety of ways which had to be factored in and on its own version the examples of the relationship really do not amount to parental relationship but to a friendly relationship as might be expected between an adult and his partner's daughter. On its own terms, the appellant is "the man in the house" and he helps her with her schoolwork and they do some things together socially but this is not strong evidence of a parental relationship rather than simply being friendly and influential which is not the same at all.
25. This is not a straightforward case because the welfare of the child is so important but having considered everything in context and taken as a whole, and notwithstanding Mr Tawiah's measured and helpful submissions, I am not persuaded there is any material error here. The judge's decision is wholly

consistent with the weak evidence that was before him. He invited criticism by a loose remark which was picked up when permission was granted. The evidence supports the decision and I am entirely unpersuaded that the judge's thought processes were irrational or otherwise unlawful.

**Notice of Decision**

26. I dismiss the appellant's appeal.

Jonathan Perkins

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 29 January 2021