Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/05283/2020**
Ce-File Number: UI-2022-003741

THE IMMIGRATION ACTS

Heard at Field House
On the 25 November 2022

Decision & Reasons Promulgated
On the 01 December 2022

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

RAJBINDER SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H Brachwalla, counsel instructed by FR Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Khurram, promulgated on 20 June 2022. Permission to appeal was granted by First-tier Tribunal Judge Boyes on 3 August 2022.

Anonymity

2. No direction has been made previously, and there is no reason for one now.

Background

3. The appellant is a national of India, born in 1974. It is the appellant's case that he entered the United Kingdom unlawfully on 2 February 1996. On 6 February 2020, he made a human rights' claim based on his private life as well as his relationship with a partner and her minor British children.

4. The Secretary of State refused that application in a decision dated 3 April 2020. The reasons included that the appellant had not been living with his claimed partner in a relationship akin to marriage; that the appellant did not have sole parental responsibility for the children; the appellant had failed to provide evidence of his residence in the UK; there were no very significant obstacles to his integration in India and no exceptional circumstances which would render the decision disproportionate.

The decision of the First-tier Tribunal

5. Following the hearing before the First-tier Tribunal, the judge found that the appellant could not meet any of the requirement of the Rules albeit by the time of the hearing he had been living with his partner for at least two years and he had a close relationship with his partner's children, only one of whom was a minor by the time of the hearing. The judge considered the appellant's private and family life and concluded that the decision to refuse leave to remain was proportionate interference with his Article 8 rights.

The grounds of appeal

6. The grounds of appeal were threefold. Firstly, that the judge's assessment under Appendix FM to the Rules was flawed. Secondly, that the judge failed to consider whether it would be reasonable to expect the partner's child to leave the UK and the judge' assessment of the evidence was flawed.

7. Permission to appeal was granted on the basis sought

8. In the respondent's Rule 24 response, received on 2 September 2022, the appeal was opposed on all grounds.

The hearing

9. Mr Brachwalla had not seen the Rule 24 response, which was initially relied upon by Mr Avery. After having sight of a copy, he made detailed submissions in support of his grounds of appeal. In terms of the first ground, he argued that the judge had focused on the sparse written evidence and not considered the oral evidence of four witnesses to the effect that the appellant had been living with his partner since 2015. There had been no challenge to the credibility of the witnesses and the judge made no such finding.

10. Regarding the second ground, Mr Brachwalla argued that there had been no assessment by the judge under section 117B (6) of the 2002 Act. The appellant claimed to be in a parental relationship with his partner's British children and therefore there ought to have been some consideration of the reasonableness of the children leaving the United Kingdom. That the appellant was relying on this provision was set out at paragraph 20 of the appellant's skeleton argument. Furthermore the judge had accepted that the appellant had a familial relationship with the partner and children but made no mention of section 117B (6). The judge applied the wrong test and further erred in attaching little weight to the appellant's family life with the children.

11. Mr Brachwalla also relied on the third ground, emphasising that the judge had not considered the content of the social worker's report which stated that the appellant's presence had brought about a number of improvements in the lives of his partner's children. He urged me to set aside the decision of the First-tier Tribunal and remit the matter for a rehearing.

12. In reply, Mr Avery stated that he had initially thought there was not an error of law but that he had to accept that the judge failed to make clear findings and that some findings were conflicting.

13. At the end of the hearing, I informed the parties that I was satisfied that there had been a material error of law in the decision of the First-tier Tribunal and that the decision was set aside.

Decision on error of law

14. In reaching this decision, I have focused on the second and third grounds. A significant aspect of the appellant's appeal against the refusal of his human rights claim was his relationship with his partner's two British children. As is clear from the skeleton argument which was before the First-tier Tribunal, the appellant was relying on section 117B (6), in that he was claiming a genuine and subsisting relationship with the children and that it would not be reasonable for them to leave the United Kingdom. Indeed, the appellant adduced an independent social worker's report to support his claim. Nowhere in the decision, is there any mention of 117B (6) and nor does the judge make a clear finding as to whether the appellant's relationship with the children was 'genuine and subsisting' or whether it was reasonable to expect them to leave the United Kingdom.

15. At [53 vi] the judge accepts that the appellant has a 'familial relationship' but does not clarify what is meant by this. In any event this is not the test set out in the 2002 Act. Furthermore, also at [53 vi] the judge assesses the children's position on the basis of a test of 'unjustifiably harsh consequences' which is the wrong test and invokes a higher threshold.

16. Lastly, there is a failure to take into consideration the report of the independent social worker. The opinion set out in that report included that the appellant has helped the children with their education, that the appellant and the children were a close 'father-son' unit and that he was a good role model.

17. In deciding whether to retain the matter for remaking in the Upper Tribunal, I was mindful of statement 7 of the Senior President's Practice Statements of 25 September 2012. Taking into consideration the nature and extent of the findings to be made as well as that the appellant has yet to have an adequate consideration of his human rights appeal at the First-tier Tribunal, I reached the conclusion that it would be unfair to deprive him of such consideration

Decision

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

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Khurram.

No anonymity direction is made.

Signed: T Kamara Date: 30 November 2022

Upper Tribunal Judge Kamara