



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

Appeal Number: UI-2023-002376
HU/5330/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 8 September 2023**

**Decision & Reasons
Promulgated
On 10 October 2023**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL McCARTHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ABOR UDDIN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Melvin, Home Office Presenting Officer
For the Respondent: Mr R Wilcox, instructed by Sony Sadaf Haroon, Solicitors

DECISION AND REASONS

1. The respondent Secretary of State appeals, with permission of Upper Tribunal Judge Macleman, the decision of First-tier Tribunal Judge Lucas (the judge), that was promulgated on 31 March 2023.

The appellant's case

2. The grounds of application settled by the Secretary of State argue two points. First, that the judge misdirected himself in law when applying Section 117B(6) of the Nationality, Immigration and Asylum Act 2002

because he failed to make reasoned findings as to whether Mr Uddin had a genuine and subsisting parental relationship with a qualifying child and that it would not be reasonable to expect the child to leave the United Kingdom. In essence, this ground argues that cohabitation of itself was insufficient to engage section 117B(6).

3. The second point is related and argues that this error infects the judge's assessment of proportionality under Article 8(2) of the human rights convention because insufficient weight was given to the public interest, particularly given Mr Uddin's very poor immigration record and the need to maintain effective immigration controls.
4. In his skeleton arguments, Mr Melvin recounted Mr Uddin's very poor immigration history. After recording the fact that the judge did not identify the relevant legal provisions being applied, Mr Melvin sets out the concern that the judge failed to explain why Mr Uddin has a genuine and subsisting relationship with a qualifying child, or that he has taken on a parental role, or why it would not be reasonable to expect the child to leave the UK. In support of the second ground, Mr Melvin points out that the judge found there was little independent evidence to show that Mr Uddin has an active role in the life of his stepson, the potentially qualifying child.
5. In oral submissions, Mr Melvin relied on both the grounds and his skeleton arguments. He reminded me that the judge's findings are limited to six or seven lines at paragraph 63 of the decision. He points out that the judge found that Mr Uddin is married to the mother of the relevant child, but the judge does not make any findings about the nature of the relationship between that child and Mr Uddin other than that they cohabit. The judge failed to apply case law relevant to this matter and therefore his findings are unsound.

The respondent's case

6. Mr Wilcox began by reminding me of Mr Uddin's immigration history and that the judge could only have been looking at the question of Article 8 rights outside the immigration rules. He accepted that the judge's findings of fact and reasons are not very lengthy, but the issue is whether they are adequate.
7. Mr Wilcox took me to the judge's findings at paragraphs 57 to 61. It is clear the judge found there to be a genuine and subsisting relationship between Mr Uddin and his wife. At paragraph 61, the judge went on to find that Mr Uddin cohabits with his wife and her son. Mr Wilcox's first point was that this finding of cohabitation is an indication that the judge had in mind there was a genuine and subsisting relationship.
8. After reminding me of paragraph EX1, Mr Wilcox submitted that even if the judge's findings about the parental relationship with his stepson were insufficient, the finding that Mr Uddin has a genuine and subsisting relationship with a partner who is in the UK and who is a British citizen,

meant that any error could not be material to the outcome because the appeal would succeed on the alternative basis of EX1(b). Mr Wilcox said family life could not continue outside the UK because Mr Uddin's wife could not leave her son in the UK and her son could not be expected to leave the UK because of his ongoing relationship with his biological father.

9. As an aside, Mr Wilcox reminded me that where there is a split family, as here, there can be a parental relationship between a child and more than two parental figures, as explained in R (on the application of RK) v Secretary of State for the Home Department (s.117B(6); "parental relationship") IJR [2016] UKUT 31 (IAC).
10. Overall, Mr Wilcox submitted that when read as a whole, the judge made adequate findings that are consistent with an application of section 117B(6) and relevant case law.

Other issues

11. After hearing from Mr Melvin, I asked him whether it could reasonably be inferred from paragraphs 57 to 61 that the judge accepted that Mr Uddin had cohabited with his wife and his stepson since 2019, and whether it was therefore the length of the period of cohabitation which led the judge to make the findings he did. Mr Melvin said this could not be inferred because of the lack of clarity in general, and because of the judge's finding at paragraph 62 that there is little independent evidence to show that Mr Uddin has an active role in the life of his stepson.
12. After hearing from Mr Wilcox, I asked him what I might make of the judge's findings at paragraph 62, given that the appeal hearing was recalled specifically for the nature of the parental relationship to be addressed and the judge had found that there was little evidence of such a relationship. Mr Wilcox said that the key evidence was cohabitation and from that should be inferred the nature of the parental relationship.

Discussion

13. The Secretary of State's appeal challenges the finding that there is a genuine and subsisting parental relationship between Mr Uddin and his stepson. This was the case presented in the application, the skeleton argument and in Mr Melvin's submissions. There has been no challenge to the other findings the judge made.
14. The fact the decision is light on reasoning is not sufficient to say it contains legal error. The question is whether the decision contains sufficient reasoning to explain how the judge applied the law to the facts. Similarly, there is no requirement for a judge to set out legal provisions and authorities, although it is useful to have such self-directions in place as it will often aid the reader understand the decision.
15. With these considerations in mind, I have examined the decision. At the heart of the decision is the rejection of the Secretary of State's reasons for

not finding the relationship between Mr Uddin and his wife to be genuine or subsisting. The judge gives his reasons in paragraphs 57 to 61, none of which is challenged.

16. The findings made by the judge at paragraphs 62 and 63 deal with the relationship between Mr Uddin and his stepson. In the former, the judge finds there is little independent evidence to show that Mr Uddin has an active role in the life of his stepson. He does not find that Mr Uddin has no role in the life of his stepson. He also finds that Mr Uddin's wife is the main carer of her son and that her son maintains contact with his biological father. In paragraph 63, the judge finds it is enough that Mr Uddin has a role in the life of his stepson and is satisfied he has such a role because he lives with him.
17. The difficulty with this reasoning is that the judge does not make findings about what role Mr Uddin has in the life of his stepson. It is not enough that he is merely involved in some way because the law requires there to be a parental relationship. This is considered in detail in R (RK) v SSHD, at paragraphs 42 to 45:

42. Whether a person is in a "parental relationship" with a child must, necessarily, depend on the individual circumstances. Those circumstances will include what role they actually play in caring for and making decisions in relation to the child. That is likely to be a most significant factor. However, it will also include whether that relationship arises because of their legal obligations as a parent or in lieu of a parent under a court order or other legal obligation. I accept that it is not necessary for an individual to have "parental responsibility" in law for there to exist a "parental relationship," although whether or not that is the case will be a relevant factor. What is important is that the individual can establish that they have taken on the role that a "parent" usually plays in the life of their child.

43. I agree with Mr Mandalia's formulation that, in effect, an individual must "step into the shoes of a parent" in order to establish a "parental relationship". If the role they play, whether as a relative or friend of the family, is as a caring relative or friend but not so as to take on the role of a parent then it cannot be said that they have a "parental relationship" with the child. It is perhaps obvious to state that "carers" are not per se "parents." A child may have carers who do not step into the shoes of their parents but look after the child for specific periods of time (for example whilst the parents are at work) or even longer term (for example where the parents are travelling abroad for a holiday or family visit). Those carers may be professionally employed; they may be relatives; or they may be friends. In all those cases, it may properly be said that there is an element of dependency between the child and his or her carers. However, that alone would not, in my judgment, give rise to a "parental relationship."

44. If a non-biological parent ("third party") caring for a child claims such a relationship, its existence will depend upon all the circumstances including whether or not there are others (usually the biologically parents) who have such a relationship with the child also. It is unlikely, in my judgment, that a person will be able to establish they have taken on the role of a parent when the biological parents continue to be involved in the child's life as the child's

parents as in a case such as the present where the children and parents continue to live and function together as a family. It will be difficult, if not impossible, to say that a third party has "stepped into the shoes" of a parent.

45. It is not necessary to consider more fully the position of a step-parent or partner of the primary carer of a child when a family has split after separation or divorce of the parents. That is not this case. That situation may, depending upon the circumstances, present a persuasive factual matrix for there to be a "third parent". The respondent's guidance differentiates between situations where the non-residential biological parent plays no (or no meaningful) continuing role in the child's life and where he or she does. In the latter situation, it is said that the step-parent or new partner would be unlikely to have a "parental relationship". Whilst each case will be fact sensitive, I do not inevitably see the virtue of the argument (other than as a numerical limitation of parents to no more than two) which excludes a step-parent or partner in this latter situation from being in a "parental relationship" if that is the substance of the relationship even where the non-residential biological parent continues to play some role. The issue will be fact sensitive and is best worked out in a case where it properly arises for decision.

18. The judge's failure to make findings on the nature of the relationship between Mr Uddin and his stepson means that the conclusion that there is a parental relationship is undermined as it is without foundation.

Disposal

19. As recorded above, Mr Wilcox submitted that the appeal should still be allowed because the judge found the relationship between Mr Uddin and his wife to be genuine and subsisting. The difficulty with taking this approach is that the judge was not addressing the questions under EX1 and therefore makes rather limited findings. It is not possible to say his findings are unambiguous about the relationship between Mr Uddin and his wife and I cannot make the inferences sought by Mr Wilcox to engage EX1.
20. Because there are many weaknesses in the decision, I have decided it should be set aside in its entirety. As this in effect means the appeal must start afresh, the appropriate disposal is to remit it to be decided afresh in the First-tier Tribunal.

Notice of Decision

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

I set aside the decision of the First-tier Tribunal.

I remit the appeal to be decided afresh in the First-tier Tribunal by a judge other than Judge Lucas.

Judge John McCarthy

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

[DATE TO BE INSERTED]