



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004717

First-tier Tribunal No: HU/55652/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 16th of January 2024

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SO
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Gilmour, Senior Home Office Presenting Officer

For the Respondent: Mr A Alexander, of Counsel, instructed by Kitty Falls Immigration Law

Heard at Field House on 10 January 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the claimant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the claimant or her family, likely to lead members of the public to identify the claimant and/ or family members. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Thailand who applies to remain as the parent of her child, WO, born in 2008. The application was refused on 12th August 2022. Her appeal against the refusal of a human rights application was allowed by First-tier Tribunal Judge Handler after a hearing on the 17th August 2023.
2. Permission to appeal was granted to the Secretary of State by Deputy Upper Tribunal Judge Monson on 29th November 2023 on the basis that it was arguable that the First-tier judge had erred in law in failing to give adequate reasons for why it was in the best interests of WO for the claimant to remain in the UK and why there was family life between the claimant and WO when making the proportionality assessment.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to determine whether any such error was material and whether the decision of the First-tier Tribunal should be set aside.

Submissions - Error of Law

4. In the grounds of appeal it is argued for the Secretary of State in short summary as follows. Firstly it is argued that it is insufficiently reasoned as to why there was an Article 8 ECHR family life relationship between the claimant and her daughter WO. It is argued that the evidence does not demonstrate a genuine and subsisting relationship between the two of them. It is argued that the conclusions on the evidence are contradictory as firstly it is stated that the claimant has not shown she has or wants direct or frequent contact with WO and then the First-tier Tribunal finds that the claimant has shown that she wants to improve her relationship with WO. The evidence from the messages between the two does not demonstrate a close relationship and there are apparently no photographs of them together in the UK. It is in any case not sufficient that the claimant wishes to reconcile with her daughter. In such circumstances it is insufficiently reasoned why it would be in the best interests of WO for the claimant to remain. Ms Gilmour clarified that she accepted that the First-tier Tribunal had been entitled to conclude that family life existed between the claimant and her daughter, and also that it was in the best interests of her daughter for the claimant to remain in the UK. She argued however that the ultimate proportionality exercise was insufficiently reasoned as to why the best interest of the claimant's daughter outweighed the public interest in preserving immigration control particularly given that this was a case which involved an evolving relationship between the claimant and her daughter.
5. No Rule 24 notice was received for the claimant but Mr Alexander provided a skeleton argument in which he argues that there was no misunderstanding of evidence by the First-tier Tribunal and that the decision is adequately reasoned. He argued that the recent face to face contact the claimant took place was in accordance with the child

arrangements order made by the family court as there were no safeguarding concerns in this case, and it was open to the parties to make child-focused arrangements for the claimant's daughter, which they continued in fact to do. It was clear from the family solicitor's letter that the idea of the court was that indirect contact would lead to direct contact between the claimant and her daughter, so the fact that this had happened was a positive matter in keeping with the court order. There were documents, including a statement, a photograph and a messages relating to the recent UK based direct contact. It was entirely open to the First-tier Tribunal to find a genuine and developing family life relationship between the claimant and her daughter given their history of a joint life and the contact that existed at the time of the hearing. It was open to the First-tier Tribunal Judge to find that in this context it was in the best interests of the child for the appellant to remain in the UK given that it was accepted for proper reasons that without the claimant being in the UK direct contact would cease. Given the recent direct contact at the time of hearing before the First-tier Tribunal, and the fact that the claimant's daughter was expressing a desire to see her again at Christmas, it was open for the First-tier Tribunal to allow the appeal on this basis.

Conclusions - Error of Law

6. At paragraph 6 of the decision there is confirmation that the decision is made on the totality of the evidence submitted by the parties, and this is summarised at paragraphs 4 to 6 of the decision. At paragraph 7 of the decision it is clear that the claimant argued that she could succeed on consideration of the appeal outside of the Immigration Rules on the basis of the family life between the claimant and WO. The First-tier Tribunal correctly directs itself to the law on Article 8 ECHR and the best interests of the child at paragraphs 9 and 10 of the decision.
7. In a careful and balanced consideration of the evidence the First-tier Tribunal finds that there is no evidence of the claimant wanted any more than to improve her relationship with WO. This was a finding open to the Tribunal given the family court proceedings and the evidence of some contact between the two, as set out at paragraph 12 of the decision, and in the context of the evidence of the claimant and WO having lived together for the first twelve years of WO's life, when they were abroad, and in the context of their not having lived together for the three years since they came to the UK in 2020. I find that it was also entirely rationally open to the First-tier Tribunal to have found it was in the best interest of WO to have the opportunity to develop the best relationship that she can with the claimant, and that this involved the claimant being in the UK in light of the family solicitor having said that indirect contact was ordered with a view to this progressing naturally to direct contact. I find that the First-tier Tribunal has properly relied upon the facts and evidence before it.

8. I find that it was entirely rationally open to the First-tier Tribunal at paragraph 20 of the decision to find that family life existed between a biological mother, the claimant, and 15 year old child, WO, given their significant past relationship and on-going contact. This was also accepted before me by Ms Gilmour.
9. The proportionality exercise was properly conducted at paragraph 20 of the decision weighing the public interest of maintaining immigration control against the claimant; considering the factors identified in s.117B of the 2002 Act correctly and ultimately concluding that the best interests of WO, which are once again properly defined as being a primary consideration and not an overriding consideration, outweigh the public interest as this is the only way in which contact can be maintained between WO and the claimant whilst WO is a child, and there thus being a possibility of maintaining the development and re-establishment of their former relationship. This conclusion was in keeping with the evidence in the email letter from Morecrofts Solicitors, the family solicitors of 19th July 2022 which states that it would be impossible for the relationship to progress naturally to direct contact without the claimant being able to remain in the UK. I find that the decision is sufficiently reasoned and was rationally open to the First-tier Tribunal.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. I uphold the decision of the First-tier Tribunal allowing the appeal on Article 8 ECHR human rights grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant/ claimant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10th January 2024