IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004809

First-Tier Tribunal Nos: HU/50086/2023
LH/03575/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14th March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

SYED FAROOQ HASSAN
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Sarker, Solicitor; Sarker Solicitors
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 14 December 2023

DECISION AND REASONS

1. The Appellant, a citizen of Pakistan, appeals against the decision of First-tier Tribunal Judge F E Robinson (the "FTTJ") promulgated on 20th October 2023 dismissing the Appellant's appeal against the refusal of his application for leave to remain on the basis of his family and private life.

2. The Appellant applied for permission to appeal on four grounds, namely that:

   (1) The FTTJ has essentially made a contradictory determination

   (2) The FTTJ arguably failed to properly assess the best interests of the child and/or section 55 of the Borders, Citizenship and Immigration Act 2009

   (3) The FTTJ applied the wrong test, namely Kugathas v. SSHD (2003) INLR 170 ("Kugathas")

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(4) The FTTJ made irrational findings.

3. Permission to appeal was granted by First-tier Tribunal Judge Parkes in the following terms:

> 1. The application is in time.
>
> 2. The grounds argue that the Judge made contradictory findings that the Appellant was in a genuine and subsisting relationship with his partner and her children but did not enjoy family life. It is argued that the Judge did not address the children's best interests adequately and failed to consider article 8.
>
> 3. The Judge was entitled to find that the Appellant had not stepped into the father's shoes but had found that he had a quasi-parental relationship with them. The finding that article 8(1) was not engaged is questionable. The issue of the Appellant leaving the UK and applying for leave to enter from abroad as he should have done does not appear to have been addressed either.
>
> 4. The grounds disclose arguable errors of law and permission to appeal is granted.

4. At the conclusion of the hearing I reserved my decision, which I now give. I do not find that the decision demonstrates material errors of law, such that it should be set aside.

5. In respect of the first ground and the argument that the FTTJ made a contradictory determination by first accepting at paragraph 25 that family life exists between the Appellant and his partner and stepchildren compared with paragraph 28 where the FTTJ states that there is merely a "quasi-parental" relationship between the Appellant and stepchildren which does not engage Article 8, I do not find an inconsistency is established as if one reads paragraph 25 carefully, the FTTJ does <u>not</u> accept that family life exists between the Appellant and the stepchildren as the grounds of appeal erroneously state. Paragraph 25 reads as follows (with underlining emphases supplied):

> "It is accepted that the Appellant has a genuine and subsisting relationship with Ms Veniene. The Appellant stated that he had lived with her and her two children for 2 years; Ms Veniene stated that it was around 3 years. I accept on the basis of passports adduced in evidence that Ms Veniene's children are aged 18 years and 11 years. I also accept on the basis of all the evidence and bearing in mind the accepted relationship between the Appellant and Ms Veniene that the Appellant has been <u>living with both Ms Veniene and her two children for at least 2 years</u> and that <u>he enjoys family life with Ms Veniene</u>".

6. Therefore, although the FTTJ finds that the Appellant is living with both his partner and her two children for at least 2 years, the FTTJ then finds that he enjoys family life with his partner without mention of the stepchildren. Thus, there is no inconsistency between paragraph 25 and 28 because Ground 1 as formulated and pleaded represents a careless, misreading of the Decision. During the course of the hearing, I raised the explicit wording used by the FTTJ in paragraph 25 to Mr Sarker's attention, however he could not explain why the paragraph should not be read at face value nor did he point to any other

paragraph to establish his point concerning alleged inconsistency in the decision. I also note that in paragraphs 26-28 of the Decision the FTTJ gives further fact-specific reasons for finding that family life was not established between the Appellant and the stepchildren thus giving reasons for this decision. Although Mr Sarker indicated he disagreed with the FTTJ's findings and pressed me to find that the conclusion reached should have been different, he did not once argue that the findings were perverse or irrational or somehow not open to the judge to so conclude. In any event, whilst I might not have reached the conclusions that the FTTJ did, that does not mean they were not open to the Judge to make. I note specifically that the FTTJ mentions taking into consideration the authorities of R, (on the application of RK) v Secretary of State for the Home Department (s.117B(6); "parental relationship") IJR [2016] UKUT 31 (IAC) and Ortega (remittal; bias; parental relationship) [2018] UKUT 298 (IAC) which are the appropriate reported authorities concerning the existence of a "parental relationship" before the Judge then applies the ratio of those judgments to the Appellant's case at paragraphs 27-28 in the following terms:

> "27. The evidence surrounding the biological father of Ms Veniene's children is very limited. The evidence of the Appellant and Ms Veniene is that he is currently in Lithuania and there is limited contact between him and his children; Ms Veniene referred to the last contact being in July when they met him for a day when they were in Lithuania. However the Appellant referred in evidence to needing the consent of the children's biological father if they were to move to Pakistan which suggests that he has some involvement in their lives and responsibility for their upbringing. There is no corroborating evidence relating to the role of the children's father.
>
> 28. For all these reasons, whilst Ms Veniene referred to the relationship between the Appellant and her youngest child as "like a father and daughter", in light of this lack of detail regarding the children's biological father and the lack of corroborating evidence relating to both the Appellant's role in the two children's lives and that of their biological father, I find on balance that although it appears that the Appellant currently has a quasi parental relationship with Ms Veniene's two children, he has not "stepped into the shoes" of a parent and does not enjoy family life with them under Article 8(1) ECHR. In making this finding I have regard to all the circumstances and the relevant caselaw including Kugathas v SSHD (2003) INLR 170, RK (s.117B(6); "parental relationship") IJR [2016] UKUT 00031 and Ortega (remittal; bias; parental relationship) [2018] UKUT 298.

7. The above paragraphs thus demonstrate that the FTTJ applied the relevant binding authorities concerning "parental relationships" and the FTTJ concludes against the Appellant due to the absence of evidence concerning the extent of the biological father's involvement with the stepchildren and also as the FTTJ was not persuaded that the Appellant had "stepped into the shoes" of a parent and therefore did not satisfy the judge that he was a "second" or even "third parent" aside from his partner, the mother of the two children. Nothing in the grounds nor Mr Sarker's oral submissions was directed towards showing that these conclusions were not open to the Judge to reach, notwithstanding that the alleged inconsistency had neither been identified nor established. Therefore, for the above reasons, Ground 1 fails.

8. Turning to the second ground and the arguments that the FTTJ did not properly assess the best interests of the children and/or section 55 of the 2009 Act, Mr

Sarker directed my attention to paragraph 35 and argued that the FTTJ had merely kept the factors mentioned in his mind but had not considered the children's best interests. Again, it is important to consider the content of paragraph 35 which reads as follows:

> "Ms Veniene would have her two children with her who would, I accept, find it difficult to adjust to life in Pakistan with her. In considering her two children I have regard to section 55 of the 2009 Act and relevant caselaw including ZH (Tanzania) (FC) (Appellant) v SSHD [2011] UKSC 4, Zoumbas v SSHD 2013 UKSC 74, Azimi- Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 00197 (IAC) and EV (Philippines) and Others [2014] EWCA Civ 874. I bear in mind that the children are both at school; however, (bearing in mind EX.1.(a) of Appellant FM to the Immigration Rules) they are not British citizens, they have only been in the UK for approximately 5 years and prior to that lived in Lithuania; I have seen no evidence that they have not adjusted to that change of location or language; I have also seen no evidence of any particular needs of the two children which might mean that they would find it more difficult to adjust to life in Pakistan were they to go there with Ms Veniene and the Appellant and I have seen no corroborating evidence relating to their life in the UK which might indicate a particular attachment to this country."

9. Again, the above paragraph shows that the FTTJ has expressly considered section 55 of the 2009 Act and cited the relevant, binding authorities concerning the 'best interests' of children before turning to consider their individual facts. Consequently, the argument that section 55 has not been properly considered does not have any merit whatsoever as this is precisely what the FTTJ appears to have done. Once more, I did not hear any argument from Mr Sarker that these findings were not open to the judge to reach but merely that owing to the facts the judge considered, the outcome ought to have been different than it was. That argument is hollow a mere disagreement with the judge's conclusion and does not begin to address why the judge was not entitled to reach the conclusion he did or that no reasonable judge could have reached such a conclusion on the facts of the appeal. Although the decision may be described as firm and stringent, that does not mean it was not within the range of findings open to the judge to conclude; nor am I entitled to interfere with the judge's decision owing to what I may have found as that is not my task or role.

10. Moving to the third ground and the argument that the FTTJ applied the wrong test in considering whether family life exists, namely the test set out in Kugathas, in his submissions before me, Mr Sarker retreated from his pleaded argument that Kugathas was not the correct test for family life between adults in respect of the older stepchild (who was 18 years old at the date of hearing) and instead, relying upon the authorities of Singh & Anor v The Secretary of State for the Home Department [2015] EWCA Civ 630 at [24] and AP (India) v The Secretary of State for the Home Department [2015] EWCA Civ 89 at [45], argued that family life can be engaged between an adult child that has attained the age of 18 years and their parents which will be determined by a fact-specific exercise. These are of course trite points but the difficulty with this argument is that it does not demonstrate that the fact-specific findings that the judge made were not open to him. For example, had the judge found that family life between the Appellant and the older stepchild was not engaged purely due to the stepchild's age, that might be a different matter as these authorities tell otherwise; but due to the fact that the FTTJ was not persuaded that there was a parental relationship based on the

factual circumstances between the Appellant and older stepchild it is unclear what relevance Mr Sarker's alternative submission has to this appeal. Thus, this alternate submission appears to be misguided as it is not directed toward challenging the findings actually made by the FTTJ and has no relevance to this appeal.

11. In respect of the fourth ground, Mr Sarker explicitly withdrew this ground. However, even so, I pause to note that the pleaded grounds merely cite treatises in law and do not make any reference to passages within the FTTJ's decision that are said to be irrational or perverse or erroneous. As such, there is no error identified nor pleaded in the fourth ground in any event.

12. Finally, in respect of the comment by Judge Parkes in granting permission, that "(t)he issue of the Appellant leaving the UK and applying for leave to enter from abroad as he should have done does not appear to have been addressed either", I note that this argument was not pursued before the FTTJ and was in fact expressly said to be 'inapplicable' at §51 of the Supplementary Appeal Skeleton Argument drafted by counsel that attended before the First-tier Tribunal.

13. I therefore find that the decision is free from error and the judge was entitled to make the findings that he did.

Notice of Decision

14. The appeal to the Upper Tribunal is dismissed.

15. The decision of the First-tier Tribunal shall stand.

Judge P Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

28th December 2023