



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07405/2014

THE IMMIGRATION ACTS

Heard at Field House
On 10th April 2015

Decision and Reasons Promulgated
On 20th May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Mr Unisa Kamara
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mascord, of Lawrence Lupin Solicitors
For the Respondent: Ms Savage, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, Mr Unisa Kamara date of birth 25th July 2014 is a citizen of Sierra Leone. Having considered all the circumstances I do not make an anonymity direction.
2. This is an appeal by the Appellant against the determination of First-tier Tribunal Judge Barker promulgated on 12th January 2015, whereby the judge dismissed the Appellant's appeal against the decision of the Respondent dated 16th September 2014.

The decision by the Respondent was to remove the Appellant from the United Kingdom after refusing the appellant asylum or other relief whereby he would be able to remain in the UK.

3. By decision made on the 11 February 2015 leave to appeal to the Upper Tribunal was granted. Thus the matter appears before me to determine in the first instance whether or not there is an error of law in the original determination.
4. The only ground upon which leave has been granted relates to appendix FM and paragraph EX. 1. Leave was not grant on the remaining grounds. The judge had dismissed the Appellant's claim to asylum, humanitarian protection or relief on grounds of Article 2 and 3 of the ECHR and in so doing had found that the Appellant's account to substantiate his claim was not credible.
5. The Appellant was seeking to rely upon his relationship with a Mrs Kamara, with whom the Appellant had been living from March 2013. Mrs Kamara has a child and it is the relationship of the Appellant to that child that is the foundation of the appeal to the Upper Tribunal. It is submitted that the Appellant has a real and genuine parental relationship with Mrs Kamara's child and that by reason thereof the Appellant can succeed under Appendix FM. The evidence otherwise was to the effect that the biological father of the child had had no involvement with the child for some time.
6. In making that submission reliance is placed on a Home Office policy as set out in Paragraph 11.2.1 of the Home Office Guidance Appendix FM 1.0 Family Life (as a Partner or a Parent) and Private Life: 10 Year Routes November 2014.
7. In the decision Judge Barker ruled that the Appellant could not succeed under Appendix FM because in looking at whether the Appellant was a parent for the purposes of the Immigration Rules paragraph 6 of the rules excluded the Appellant from being a parent because only a step-parent, where the corresponding natural parent had died, could qualify as a parent.
8. On behalf of the Appellant it is submitted that the policy identified gives a different meaning to the term parent to be applied in appendix FM in that [as cited in the passage set out in the grounds] :-

'The phrase goes beyond the strict legal definition of parent reflected in the definition of "parent" in paragraph 6 of the Immigration Rules, to encompass situations in which the applicant is paying a genuinely parental role in a child's life, whether or not recognised as a matter of law or not.

This means that an applicant living with a child of their partner and taking a step-parent role in the child's life could have a genuine and subsisting parental relationship with them even if they have not formally adopted the child, but only if the other biological parent played no part in the child's life.....'
9. The Appellant's representative has submitted a copy of an extract from the policy guidance from which the extract set out is taken. The guidance begins:-

‘11.2 Factors to Consider

The decision maker must consider the following factors where relevant:

Where the application is being considered under paragraph EX.1.(a) in respect of the 10 year partner or parent route the decision maker must decide whether the applicant has a genuine and subsisting relationship with the child. This will be particularly relevant where the child is the child of the applicant’s partner, or where the parent is not living with the child.’

10. The policy then continues as set out in paragraph 8.
11. The Appellant’s representative submits that the policy informs the approach that should be taken to EX.1 and its application to the situation of the Appellant.

Paragraph EX.1 provides:

Section EX: Exceptions to certain eligibility requirements for leave to remain as a partner or parent

EX.1. This paragraph applies if

- (a)
 - (i) the applicant has a genuine and subsisting parental relationship with a child who-
 - (aa) is under the age of 18 years; or was under the age of 18 years when the applicant was first granted leave on the basis that this paragraph applied (HC 760 13.12.2012)
 - (bb) is in the UK;
 - (cc) is a British Citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application; and
 - (ii) it would not be reasonable to expect the child to leave the UK; or
- (b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection and there are insurmountable obstacles to family life with that partner continuing outside the UK.

12. It was submitted on behalf of the Respondent that EX.1 only excludes an applicant from certain of the requirements of the rules under Appendix FM. One of the requirements of the rules, which it does not exclude an individual from, is paragraph “Relationship Requirements –ELTRPT.2.3 which provides:-

E-LTRPT.2.3. Either-

- (a) the applicant must have sole parental responsibility for the child; or the child normally lives with the applicant and not their other parent (who is a British Citizen or settled in the UK) or
- (b) the parent or carer with whom the child normally lives must be-
 - (i) a British Citizen in the UK or settled in the UK;

(ii) not the partner of the applicant; (which here includes a person who has been in a relationship with the applicant for less than two years prior to the date of application) (HC 565 06.09.2012) and

(iii) the applicant must not be eligible to apply for leave to remain as a partner under this Appendix.

13. The Appellant does not have sole parental responsibility and the Appellant lives with the parent of the child as the partner of that person. Accordingly whether the Appellant can rely upon EX.1 would not be material in any event as the Appellant could not meet the requirements of paragraph E-LTRPT.2.3.
14. Further the case of Sabir (Appendix FM-EX1 not free standing) [2014] UKUT 00063 (IAC) makes clear that EX.1 does not create a free standing right of appeal. As is evident from paragraph 9 of Sabir the requirements of Appendix FM have to be read sequentially and EX.1 does not create a separate category of individual that can succeed under the rules, it only excuses an applicant from meeting certain of the rules. The applicant has to meet the other requirements of the rules.
15. Here the Appellant cannot meet the requirements of E-LTRPT2.3 and EX.1 does not exclude compliance with that requirement. For that if for no other reason the Appellant could not satisfy the requirements of the rules and Appendix FM. Accordingly any error in applying Appendix FM is not material, even if there were an error with regard to the approach of whether a step-father can rely on the rules.
16. With regard to the Appellant being a step-father, paragraph 6 does permit a step-father to be considered to be a parent for the purposes of the rules but only in certain limited circumstances.
17. The policy guidance is clear in its opening that in respect of an individual, who is applying under the *10 year partner route or parent route*, which can include in limited circumstances a step-father. As the case law makes clear it does not create a separate category of individual.
18. The policy merely enables a decision maker, in considering the factors in assessing whether there is a genuine and subsisting parental relationship, to look at factors wider than the definition contained in paragraph 6 and one is not limited to looking at parent just in terms of paragraph 6. However one has to be a parent in the first instance. In the light of the case law the approach by the judge does not disclose any error of law.
19. For the reasons set out there is a no material error of law in the determination. I uphold the decision to dismiss this matter on all grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure