



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

Appeal Number: IA/43357/2014

THE IMMIGRATION ACTS

Heard at Field House

On 6 November 2015

**Decision & Reasons
Promulgated**

On 18 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MR SAID ANNEWETAY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Legal Representative

For the Respondent: Ms Emma Savage, 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 Metzger (Judge Metzger) promulgated on 16 June 2015 in which he dismissed the Appellant's appeal. That appeal was in turn against the decision of the Respondent, dated 10 October 2014, to remove him from the United Kingdom by way of directions under section 10 of the Immigration and Asylum Act 1999.

2. The Appellant had arrived in this country in August of 2003. Thereafter he had leave to remain in the first instance as a student and then as a Tier 1 Migrant with certain gaps in that leave occurring during the relevant period. Three unsuccessful attempts for residence cards under the EEA Regulations had been made by the Appellant. On 23 April 2014 he made a human rights application to the Respondent. This was then refused. The Respondent considered the application under paragraph 276ADE of the Rules, Appendix FM to the Rules and in addition she found that there were no compelling circumstances.

Judge Metzger's decision

3. The Appellant then appealed to the First-tier Tribunal. He was unrepresented before Judge Metzger and appears unrepresented before me today. Judge Metzger accepted that the Appellant was in a longstanding relationship with a Polish national, TK, despite some periods of separation. He found that the Appellant and TK had a daughter, M, who was born on 26 October 2008. He accepted that there was family life between the Appellant, TK and M for the purposes of Article 8. It is stated in Judge Metzger's decision that the Appellant accepted that his case could not succeed under the Rules themselves. Judge Metzger therefore considered the case outside of the Rules.
4. Judge Metzger found that M was not a British citizen and had not lived continuously in the United Kingdom for a period of seven years or more. He found that the Appellant had relatives in Ghana and was a healthy individual. The judge concluded that there were not very significant obstacles to the Appellant, TK and M going to live in either Poland or Ghana. Alternatively the Appellant could go to Ghana alone and family life could be maintained by visits. Finally, and in the further alternative, the Appellant could return to Ghana and make an application for entry clearance to return to the United Kingdom.

The grounds of appeal

5. The Appellant drafted his own grounds of appeal citing Section 55 of the Borders, Citizenship and Immigration Act 2009.
6. First-tier Tribunal Judge Astle granted permission by a decision of 8 September 2015. She cited the best interests of M as being the core issue.

The hearing before me

7. At the hearing before me the Appellant acknowledged that the limited documentary evidence that I have on file was, together with photographs in his possession, the only evidence produced before Judge Metzger. He told me that at that time TK was a student but was in fact on a work placement as part of her university degree course. She was living up in Leeds with her mother whilst the Appellant was living in London. They

would visit each other regularly. At the time M was in Year 1 of her primary school education. He confirmed that M was healthy.

8. For the Respondent Ms Savage submitted that there was no error in Judge Metzger's decision in that he took all relevant matters into account, albeit that he did not expressly state the term "best interests". In any event she submitted that if there an error it was immaterial given the lack of evidence before Judge Metzger on M's circumstances.
9. I raised the possibility that the Appellant may have had a right to reside in the United Kingdom under the 2006 EEA Regulations on the basis of a durable relationship with TK. I accept Ms Savage's response that this had not been raised before Judge Metzger and of course the application made to the Respondent was not an EEA application but one based upon Article 8 only.
10. Having considered the evidence, the submissions made to me and the decision of Judge Metzger, I find that there are no material errors of law in his decision. Although his findings at paragraphs 11 and 12 could perhaps have been expressed more clearly, I find that he did take into account relevant matters relating to M and her position in this country. These were expressed perhaps albeit briefly but nonetheless in a sustainable way. He had information before him and in my view was aware of her nationality (that being Polish) and the time that she had lived in the United Kingdom.
11. If I am wrong about that and there was an error in Judge Metzger's determination I would nonetheless find that it was not a material error. This is because of the distinct lack of evidence before him relating to M's circumstances in this country. I do not criticise the Appellant for this but it is just a fact: there was nothing in respect of social ties beyond her school life; no evidence of any ill health; and no evidence from her school and no suggestion in fact that there were any educational difficulties.
12. There were no other circumstances, or at least there was no evidence before Judge Metzger of any circumstances, that could properly be described as compelling in respect of this case succeeding outside of the Immigration Rules.
13. In my view Judge Metzger did not err in failing to consider the possibility of an EEA dimension to this appeal, the matter never having been raised at any stage, and although there was some evidence to suggest that such an issue *may* be relevant his failure to address the point substantively was not a material error in all the circumstances.
14. Therefore the decision of Judge Metzger shall stand and the Appellant's appeal to the Upper Tribunal must be dismissed.
15. I note that on the face of it at least the Appellant *may* be said to be in a durable relationship with TK, a Polish national who *may* possibly be a qualified person under the 2006 Regulations. It is possible therefore for

the Appellant to make a specific EEA application to the Respondent providing relevant information relying on the finding by Judge Metzger that there is a family life between him and TK and his child M, and providing relevant evidence as to TK's current situation as a student in this country. He would of course be advised that he would need to satisfy the various requirements of the EEA Regulations, in particular TK's situation as a student, and he would do well to look at the Regulations himself or perhaps to take legal advice on this particular issue.

Notice of Decision

The making of the decision of the First-tier Tribunal does not involve the making of an error on a point of law.

The Appellant's appeal is dismissed and the decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed

Date: 16 November 2015

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 16 November 2015

Deputy Upper Tribunal Judge Norton-Taylor