



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01318/2015

THE IMMIGRATION ACTS

Heard at Field House
On 12 July 2018

Decision & Reasons Promulgated
On 19 July 2018

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR M J
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not in attendance nor represented

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Although anonymity was not granted by the First-tier Tribunal, the case involves an issue relating to contact with a child. In order to avoid identifying the child, I have made an anonymity order also in relation to the Appellant and the child's mother (see below). No report of these proceedings shall directly or indirectly identify the Appellant, any member of his family or the child and the child's mother. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND

Background to these proceedings and proceedings in the Family Court

1. This appeal came before me for a resumed hearing following an error of law decision of Deputy Upper Tribunal Judge Garratt promulgated as long ago as 25 February 2016 setting aside the First-tier Tribunal decision of Judge D Dickinson promulgated on 20 May 2015 in relation to the issue identified at [9] of DUTJ Garratt's decision. DUTJ Garratt's decision reads as follows (so far as relevant):

[8] However, the decision of the judge that the appellant did not have a child living in the United Kingdom is clearly flawed. The judge refers to the appellant as claiming that he had a son called "[P S W G]" when no such name was ever used. It is not clear why the judge referred to part of the son's name as the same as a district of [B] [W G], when there had been no such reference in other evidence. Additionally, although the judge acknowledges that he heard evidence from the appellant's sister (paragraph 11) there is no analysis of that evidence or consideration of its value in supporting the appellant's claim to have a child born in the United Kingdom. These failings were material to the judge's conclusions on human rights issues.

[9] The decision of the First-tier Tribunal therefore shows errors on points of law such that it should be re-made in relation to human rights issues focussing upon the appellant's claimed relationship with his son, born in UK. The dismissal of the asylum and humanitarian protection claims shall stand.

DIRECTIONS

[10] The appeal will be re-made in relation to the limited issue identified in paragraph 9 above, by a resumed hearing in the Upper Tribunal before me sitting at the Stoke Hearing Centre on a date to be notified.

..."

The appeal was transferred to me following the error of law decision by a transfer order of the Principal Resident Judge dated 1 February 2017.

2. This appeal is of some vintage and it is therefore helpful to remind myself that the Respondent's decision under appeal is one dated 13 January 2015 giving the Appellant notice of removal as an overstayer. Coupled with that, the Respondent made a decision refusing the Appellant's claims for asylum, humanitarian protection and based on his human rights. The Appellant appealed on asylum, humanitarian protection and human rights grounds.
3. The effect of DUTJ Garratt's decision is to preserve the dismissal of the asylum and humanitarian protection grounds and leave for determination the issue of the Appellant's human rights only, particularly his rights arising from the relationship with a child who he claims is his son.
4. This appeal has a long history and I have appended to this decision, my previous adjournment decision and subsequent case management direction decisions. In short summary, since my first decision on 2 February 2017, the appeal has been adjourned on a number of occasions to await the outcome of the contact proceedings brought by the Appellant to gain contact with his son.

5. In summary of what I have been told about the Family Court proceedings, proceedings seeking contact were initially issued in the Nottingham Family Court. At the time of the appeal before the First-tier Tribunal, those proceedings had been issued and the Appellant had one hearing on 12 March 2015. The next information received from his family law solicitors was that a hearing of the Appellant's application was listed on 10 January 2017. Meanwhile, the Appellant's ex-partner and child had apparently re-located to Scotland and therefore proceedings had to be reinstated in that jurisdiction. An order was made by the Court in Scotland for documents to be served on the Department for Work and Pensions and the Nottingham County Court to disclose any information held by them as to the whereabouts of the Appellant's ex-partner and child.
6. The Appellant's ex-partner and child having been traced following that order, the Scottish Court ordered a child welfare report on 15 June 2017 which was made available to the Court dealing with the family proceedings on 8 August 2017. The Appellant's family law solicitors informed the Tribunal that supervised face-to-face contact had been ordered and if the Appellant showed a commitment to contact, the contact frequency duration would be increased. The Appellant's ex-partner opposed contact.
7. The contact proceedings were then listed for a full hearing on 9 to 11 April 2018.
8. By e-mail dated 28 June 2018, the Appellant's representative in this appeal wrote to the Tribunal as follows:

"This is to request, as instructed by the Appellant, that the Tribunal decides this appeal now on the papers without an oral hearing.
We confirm the fact that the Appellant's child contact proceedings have led to a Family Court Decision which is not in the Appellant's favour and the Appellant cannot seek to challenge this decision."
9. I am not told what was the order made by the Family Court. As Mr Melvin submitted, however, and as I accept, the only way of reading what is said by the Appellant's representative is that the Appellant has been refused contact with his child. I am not told the reasons for that decision but I do not need to know what those are in order to determine this appeal.
10. Although this appeal remained in my list for 12 July, I heard only very brief submissions on behalf of the Respondent, reminding me of the limited scope of the resumed hearing (following DUTJ Garratt's decision) and inviting me to dismiss the appeal.

Appellant's immigration background and evidence of circumstances

11. I have received no updated evidence from the Appellant. I have therefore based the below on the documents before the First-tier Tribunal and what is said in the First-tier Tribunal decision about the Appellant's evidence before that Tribunal.

12. The Appellant is a national of Gambia, born 1 April 1975. He came to the UK in late 2006 with leave as a visitor (Screening interview: 2.1). He has since overstayed.
13. The Appellant married his ex-partner (also a Gambian national) in April 2013 but they separated in August 2013. The child he claims is his son was born on 16 January 2014. His ex-partner refused to put the Appellant's name on the child's birth certificate.
14. On 14 December 2016, the Appellant's ex-partner and child were given thirty months' discretionary leave to remain in the UK following a successful appeal decision of First-tier Tribunal Judge Kempton promulgated on 18 July 2016. The appeal was allowed mainly because the elder child of the Appellant's ex-partner (who is the child of a previous relationship) had spent more than seven years in the UK. The Appellant's child therefore has a right to remain in the UK with his mother until June 2019 and, given the reasons why that appeal was allowed, it is likely that such leave will be extended unless the factual circumstances change.
15. The Appellant claimed asylum on 16 July 2014. His asylum claim was refused on 13 January 2015 and First-Tier Tribunal Judge Dickinson dismissed the appeal on protection grounds in the decision promulgated on 20 May 2015. DUTJ Garratt upheld Judge Dickinson's decision in relation to this aspect of the Appellant's claim and I need say nothing more about that.
16. According to his statement dated 2 October 2014, the Appellant has four sisters and three brothers. One sister and one brother live in the UK. The remaining siblings as well as his mother lived at that time in Gambia. At the time of Judge Dickinson's decision, the Appellant is said to still have siblings and his mother living in Gambia.
17. The Appellant's sister in the UK gave oral evidence before the First-tier Tribunal. Her evidence as set out in her written statement dated 30 April 2015 is directed at the Appellant's relationship with his child. She says nothing about her relationship with the Appellant nor does he say anything about his relationship with her. According to their written statements at that time, they lived at different addresses some distance apart (his sister lived in Great Yarmouth and the Appellant in Nottingham).
18. The Appellant attended school in Gambia up to secondary level and left secondary education in 1990 (then aged fifteen years). He found work as a housekeeper in a hotel from 1995 to 2006 after which he came to the UK.
19. There is mention of limited health problems in the Appellant's screening interview ([3.1]) said to be breathing problems from which he has suffered since before coming to the UK and a right shoulder pain which had developed in the

previous few weeks. He confirmed that he had never seen a doctor nor had he been prescribed any medication.

DISCUSSION AND CONCLUSIONS

20. I begin with the Appellant's family life. I will assume for present purposes that the Appellant is the father of the child with whom he has been seeking contact. I note though that the Respondent continues to dispute this and I have no firm evidence that he is the child's father. Whether he is the father or not, though, the Appellant has been refused contact with that child. He cannot be said to be in a genuine and subsisting relationship with his son.
21. The child cannot in any event be said to be a "qualifying child" for the purposes of the Immigration Rules ("the Rules"). The child was born to Gambian parents, neither of whom had settled status in the UK at the time of his birth. Indeed, that remains the position now since the Appellant's ex-partner only has discretionary leave to remain in the UK. The Appellant's son has not been in the UK for more than seven years. He has been here since birth for four years.
22. For those reasons, the Appellant does not qualify for leave under Appendix FM to the Rules as the parent of a child living in the UK.
23. There is clearly no subsisting relationship between the Appellant and his ex-partner. She has opposed his contact with her child. From the limited information obtained from the Appellant's family law solicitors, the contact proceedings have been acrimonious and the ex-partner has opposed those proceedings throughout.
24. The Appellant cannot therefore succeed in a claim based on his family life as a partner under Appendix FM to the Rules.
25. Turning then to his private life, the Appellant has not been in the UK for twenty years; he arrived in 2006. He was aged thirty-one years when he arrived here. He cannot qualify for leave to remain under paragraph 276ADE of the Rules based on his length of residence.
26. In relation to paragraph 276ADE(1)(vi) of the Rules, I have no evidence as to any "very significant obstacles" to the Appellant's integration in Gambia. He has siblings and his mother still living in that country (or at least he did at the time of the First-tier Tribunal hearing and he has not provided evidence that the position has changed). In any event, he was born and brought up in Gambia. He completed his education there and was in employment there before coming to the UK. The Appellant's asylum and humanitarian protection claims were rejected by Judge Dickinson. DUTJ Garratt upheld the decision in that regard.
27. For those reasons, the Appellant cannot succeed within the Rules based on his private life.

28. In relation to an assessment of the claim outside the Rules, I take into account the factors set out in Section 117B Nationality, Immigration and Asylum Act 2002.
29. I have limited information about the Appellant's private and/or family life. I have dealt already with the Appellant's relationship with his ex-partner and child. As I have already noted, the Appellant has been denied contact with his child. Although I have not seen the order of the Court dealing with the family proceedings, I can assume that the Court will have taken the child's best interests into account and has decided that the best interests of that child do not require the Appellant to have contact with him. I have no evidence to the contrary. The Appellant has no genuine and subsisting relationship with that child. He has no ongoing relationship with his ex-partner.
30. The Appellant has a brother and sister in the UK. The Appellant said in interview that his brother is a British citizen ([A155]). I have no information as to his age save that it is said that he is married and obtained status in that way. I have no information about the age or immigration status of the Appellant's sister. She appears to be an adult as she mentions in her statement that she is a mother. I have no evidence as to the relationship between the Appellant and his siblings in the UK. I have limited evidence from the Appellant's sister which is not in any event directed at the relationship between her and the Appellant. There is nothing to suggest that their relationship is particularly close or that there are more than the usual emotional ties which would be expected to exist between an adult brother and sister.
31. There is mention of limited health problems (see [19] above) but there is no medical evidence provided in support. Although the breathing problems from which the Appellant claims to suffer are said to be of longer standing, he admits that those existed before he came to the UK and there is therefore no reason to believe that they cannot be adequately treated in Gambia. The Appellant also said at interview that he had been to see a doctor about this condition and the doctor could find nothing wrong. He was not prescribed any medication.
32. The Appellant still has family in Gambia to whom he can turn to help him to integrate back into life there. As I have already observed, although he has been away from Gambia for over eleven years, he was born and raised there and has been educated and employed in that country.
33. There is also no evidence before me as to the Appellant's private life in the UK or the interference with that which would be caused by removal. Even assuming, as I am prepared to do, that the Appellant has formed a private life in the UK via friendships, and that he continues to enjoy a relationship with his siblings here, such factors are outweighed by the public interest in this case.
34. The Appellant has been here unlawfully save for the first six months when he had leave as a visitor. His private life and any family life he has established are

deserving of little weight. As I observe, such matters are largely unevidenced in any event and the Appellant bears the burden of demonstrating the extent of his private and family life ties.

35. The Appellant has no basis of stay under the Rules for the reasons I have already given. Accordingly, the public interest in the maintenance of effective immigration control favours his removal.
36. Balancing the factors in favour of the Appellant as set out above against the public interest and noting the weak nature of the human rights claim and lack of evidence put forward by the Appellant when compared with the strength of the public interest in removal, the Respondent's decision refusing the Appellant's human rights claim is proportionate. There is no breach of Article 8 ECHR. I dismiss the appeal on human rights grounds.
37. Since there is no other ground of challenge to the decision under appeal (the other grounds based on asylum and humanitarian protection having been determined and dismissed by FTTJ Dickinson), it follows that the Respondent's decision dated 13 January 2015 to remove the Appellant as an overstayer is lawful.

Notice of decision

The Appellant's appeal is dismissed on human rights grounds. For the avoidance of any doubt, the decision of FTTJ Dickinson promulgated on 20 May 2015 dismissing the appeal on asylum and humanitarian protection grounds is upheld.



Signed

Dated

18 July 2018

Upper Tribunal Judge Smith

ANNEX: PREVIOUS DECISIONS



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

Appeal Number: AA/01318/2015

THE IMMIGRATION ACTS

**Heard at Field House
On Thursday 2 February 2017**

Determination Promulgated

...10 February 2017...

**Before
UPPER TRIBUNAL JUDGE SMITH**

Between

**MR M J
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A De Ruano, Legal Representative

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Although anonymity was not granted by the First-tier Tribunal, the case involves an issue relating to contact with a child. In order to avoid identifying the child, I have made an anonymity order also in relation to the Appellant and the child's mother (see below). No report of these proceedings shall directly or indirectly identify the Appellant, any member of his family or the child and the child's mother. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

ADJOURNMENT DECISION AND DIRECTIONS

1. This appeal was listed before me for re-making following an error of law decision of Deputy Upper Tribunal Judge Garratt promulgated as long ago as 25 February 2016 (“the Decision”) setting aside the First-tier Tribunal decision of Judge D Dickinson promulgated on 20 May 2015 in relation to the issue identified at [9] of that decision. The setting aside of that paragraph has the effect of leaving for determination the issue of the impact on the Appellant’s human rights of the relationship with a child who he claims is his son.
2. A Wolof interpreter was booked for the hearing as DUTJ Garratt identified in the Decision would be required. Unfortunately, the interpreter was not present when the hearing was ready to begin. Mr De Ruano indicated in any event that an adjournment would be sought as the Appellant’s contact proceedings are ongoing. Having discussed the position with the representatives, it was clear that it would not be possible to determine the appeal at this stage. Both accepted it would therefore be premature for oral evidence to be taken from the Appellant as to the factual issues and his sister (who also gave evidence on this issue before the First-tier Judge) was not present. Accordingly, the interpreter was stood down.
3. I ascertained from Mr Tarlow that the Respondent continues to dispute both that the Appellant is the biological father of the child and that he has a genuine and subsisting relationship with him. It was not possible to make any direction for the receipt of DNA evidence on that issue as the whereabouts of the child and his mother are unknown. It is also not clear whether the child’s mother disputes that parentage. That is clearly relevant evidence.
4. Mr Tarlow confirmed that the child and the child’s mother have been granted thirty months’ discretionary leave following an allowed appeal. I indicated that I was minded to make an order for disclosure of the appeal decision(s) in the mother’s appeal as that may include evidence relevant to the parentage of the child and will also show the basis on which they have been given status and the permanence or otherwise of that status. Although Mr Tarlow showed me a copy of the appeal decision, I declined to accept it without an order that it be disclosed for data protection issues. In light of a very brief reading of that decision, the Respondent should consider whether there is any information contained in that decision (such as the precise whereabouts of the mother and child) which should be redacted prior to disclosure to the Appellant. I note however that the decision was issued in July 2016 and, it appears from the contact proceedings, that they may have moved.
5. Mr De Ruano referred me to a letter from the Appellant’s family law solicitors dated 14 December 2016. He confirmed that the contact proceedings which were initially commenced in Nottingham had to be reinstated in Scotland as it is believed that the mother and child are in Scotland. An order for disclosure has apparently been made in those proceedings. It appears that the contact proceedings may be prolonged by the disappearance of the child and the child’s mother. Since the contact proceedings are now in Scotland, the Tribunal’s

published "Protocol on Communications between Judges of the Family Court and Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal" does not appear to apply to the obtaining of documents from the Family Court proceedings in immigration appeals. Accordingly, I indicated that I would make a direction for the Appellant to obtain and file and serve a letter from his family law solicitors explaining the procedure whereby the Tribunal can properly obtain disclosure of relevant documents from those proceedings for consideration in this appeal.

6. Finally, to avoid any inadvertent disclosure of the child's identity, I have made an order for anonymity in favour of the Appellant, the child and the child's mother. Mr Tarlow did not object to that course.
7. I therefore adjourned the remaking of the decision subject to the following directions:-
 - (1) I make an anonymity order in the terms set out above for the reasons there stated.
 - (2) By no later than 4pm on Thursday 16 February 2017, the Respondent is to file with the Tribunal and serve on the Appellant's legal representative a copy of the appeal decision and any refusal(s) of permission to appeal relating to the child and the child's mother together with a copy of the documents confirming their status. **The Respondent will need to consider whether it is appropriate or necessary to redact any details of the child and mother (particularly their address) in the documents disclosed.**
 - (3) By no later than 4pm on Thursday 2 March 2016, the Appellant is to procure, file with the Tribunal and serve on the Respondent (for the personal attention of Mr Tarlow) a letter from Thompson solicitors setting out the procedure for obtaining disclosure of documents from the Family Court in Scotland in these proceedings.
 - (4) The appeal will be listed for a further CMR on or after 6 March 2016 with a time estimate of one hour.
 - (5) Until further notice, all documents to be served on the Respondent are to be marked for the personal attention of Mr Tarlow who will retain conduct of this matter on behalf of the Respondent.



Signed

Dated

2 February 2017

Upper Tribunal Judge Smith



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01318/2015

THE IMMIGRATION ACTS

Heard at Field House
On Thursday 16 March 2017

Determination Promulgated

.....17 March 2017....

Before
UPPER TRIBUNAL JUDGE SMITH

Between

MR M J
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A De Ruano, Legal Representative

For the Respondent: Mr S Staunton, Senior Home Office Presenting Officer

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Although anonymity was not granted by the First-tier Tribunal, the case involves an issue relating to contact with a child. In order to avoid identifying the child, I have made an anonymity order also in relation to the Appellant and the child's mother (see below). No report of these proceedings shall directly or indirectly identify the Appellant, any member of his family or the child and the child's mother. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

CASE MANAGEMENT REVIEW DECISION AND DIRECTIONS

1. This appeal was listed before me for a case management review following a decision made by me promulgated on 2 February 2017 adjourning the hearing of the appeal subject to directions. The issue which arises in this appeal and requires

to be determined is whether and to what extent the Appellant is to be permitted access to a child born in the UK who he says is his son. Contact proceedings are ongoing but have been hampered by the disappearance of his estranged partner and the relevant child.

2. Following the last hearing, I gave directions for documents to be produced by the Respondent in connection with the Appellant's former partner's appeal and the basis on which she and the child came to be granted discretionary leave to remain in the UK. The appeal decision in her case was handed in at the hearing and a copy provided to the Appellant's representative.
3. By e mail dated 1 March 2017, the Appellant's family law solicitors informed the Tribunal (via Mr de Ruano) that the Nottingham County Court has now provided the Glasgow Sheriff Court with an address for the Appellant's former partner and that the Court will be serving the Initial Writ on her requiring her to deal with the contact proceedings. It is not said in that e mail whether that had already been done prior to the e mail or, if not, when it is likely to happen. Once served, the Appellant's former partner has 21 days to defend the proceedings.
4. The family law solicitors also informed the Tribunal that they are content to provide information about the contact proceedings if they are told what information is required. That appears to be addressed to the point I raised in my earlier decision that the Protocol which exists between the Tribunal and Family Courts in England and Wales for the exchange of information does not extend to the Courts in Scotland. I therefore asked to be told what procedure is in place in Scotland to deal with such disclosure.
5. I assume that the tight restrictions on disclosure of information and documentation in family law proceedings apply equally in Scotland. Whilst the Appellant's family law solicitors can probably disclose information of a more mundane nature such as that which I have directed be provided below, there is likely to come a stage when the Tribunal will need to have access to the substance of some of the documents or at least orders made by the Court so that it can assess the Article 8 issues which arise in this appeal. For the time being, if the family law solicitors consider that they require permission of the Sheriff Court in order to disclose any information which I have directed be disclosed, I will assume that they will apply for that permission. If at any stage, an issue arises regarding the propriety of disclosure, investigations will need to be made, possibly directly between the Tribunal and the Sheriff Court as to how that information can be made available.
6. A further issue arises in this appeal which may have a bearing on the Article 8 issues and/or the extent of contact which the Appellant is permitted to have with the child. That concerns an allegation made in the Respondent's immigration history that the Appellant attended court in August 2014 because of a domestic violence charge being brought against him by his ex-partner. I have also therefore directed that the Appellant provide a witness statement in relation to that issue.

7. Following discussions with the representatives I make the following directions.

DIRECTIONS

- (6) By 4pm on Thursday 13 April 2017, the Appellant is to file with the Tribunal and serve on the Respondent (for the personal attention of Mr Tarlow) a witness statement setting out the nature of the domestic violence allegation made against him by his partner which led to the Court appearance in August 2014, any proceedings arising from that allegation and any orders made by any court in that connection.

- (7) By no later than 4pm on Friday 28 April 2017, the Appellant is to procure, file with the Tribunal and serve on the Respondent (for the personal attention of Mr Tarlow) a letter from Thompson solicitors setting out answers to the following questions:-
 - (a) Has the Initial Writ been served by the Glasgow Sheriff Court on the Appellant's ex-partner? If yes, on what date? If no, when is it intended that it will be served?
 - (b) If service has been carried out, has that been effective in the sense of having located the Appellant's ex-partner and child and making her aware of the contact proceedings?
 - (c) What are the next steps in the contact proceedings and when are the deadlines for those next steps?
 - (d) When is a further hearing in the contact proceedings scheduled to take place?As noted above, so far as necessary, Thompson solicitors must obtain the permission of the Glasgow Sheriff Court for the release of information about the contact proceedings to this Tribunal and to the Respondent.

- (8) The appeal will be listed for a further CMR on the first available date after 16 June 2017 with a time estimate of one hour.

- (9) Until further notice, all documents to be served on the Respondent are to be marked for the personal attention of Mr Tarlow who will retain conduct of this matter on behalf of the Respondent.



Signed

Dated

16 March 2017

Upper Tribunal Judge Smith



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01318/2015

THE IMMIGRATION ACTS

Heard at Field House
On Friday 30 June 2017

Determination Promulgated

.....3 July 2017...

Before
UPPER TRIBUNAL JUDGE SMITH

Between

MR M J
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A De Ruano, Legal Representative

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Although anonymity was not granted by the First-tier Tribunal, the case involves an issue relating to contact with a child. In order to avoid identifying the child, I have made an anonymity order also in relation to the Appellant and the child's mother. No report of these proceedings shall directly or indirectly identify the Appellant, any member of his family or the child and the child's mother. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

CASE MANAGEMENT REVIEW DECISION AND DIRECTIONS

1. This appeal was listed before me for a further case management review ("CMR") following a decision made by me promulgated on 2 February 2017 adjourning the

hearing of the appeal subject to directions and a CMR decision and directions made on 16 March 2017. The issue which arises in this appeal and requires to be determined is whether and to what extent the Appellant is to be permitted access to a child born in the UK who he says is his son. Contact proceedings are ongoing but have been hampered by the disappearance of his estranged partner and the relevant child.

2. Following the last hearing, I gave directions for updates to be provided by the Appellant in relation to (a) court proceedings arising from allegations of domestic violence made against the Appellant by his ex-partner and (b) the contact proceedings.
3. Since that hearing, the Tribunal has received two updates from the family law solicitors dated 26 April 2017 and 3 May 2017 and a statement from the Appellant dated 20 April 2017. The Appellant's statement is vague and does not deal with what happened at Court in August 2014, the nature of those proceedings, whether any charges were brought against him and whether those have been dropped. I therefore indicated to Mr De Ruano that I would make a direction for further evidence on this point.
4. In relation to the contact proceedings, the letter from the family law solicitors deals with next steps and indicates that, as far as they are concerned, the papers have now been served on the Appellant's ex-partner. That letter (dated 3 May 2017) indicates however that the Appellant's ex-partner would have three weeks to respond to the proceedings following service and yet there is no further update. It is indicated that the court would then order an exchange of pleadings, a child welfare report would be ordered to be produced and a child welfare hearing would be fixed. There is no update on the position. At the very least I would have expected confirmation whether the Appellant's ex-partner has indicated if she is opposing the appeal, when the child welfare hearing is fixed and that a report has now been sought. If it is the case that those updates cannot be given without the Court's permission (see my earlier decision) I would have expected that confirmation of that would be produced. As it is, the matter has not progressed very far (on the face of it) in the three months or so since the last hearing.
5. I am not prepared to let this matter continue indefinitely. Mr De Ruano invited me to allow the appeal outright. However, on the evidence as it currently stands, there is no basis to do so. The Appellant's only claimed entitlement to remain is his desire to have contact with his child (who at present is still not accepted by the Respondent as being his child). The Appellant has not had any contact it appears for over two years and whilst the Appellant is taking active steps to pursue contact, if the Appellant's ex-partner is determined to avoid him having that contact, the matter may take a considerable time to resolve if it is resolved at all. As I indicated to Mr De Ruano during the hearing, it may be that if the Appellant's ex-partner is determined to avoid him having contact, she will have moved again.

6. For those reasons, I indicated that I would list the appeal for re-making on the first available date after 30 September 2017 by which time I would hope that there would be some progress in the contact proceedings. I have given directions for that hearing including that the Appellant may seek a (short) adjournment of that hearing if in fact matters develop and it appears that the contact proceedings will be resolved within a further short period.
7. Following discussions with the representatives I make the following directions.

DIRECTIONS

- (10) By 4pm on Friday 28 July 2017, the Appellant is to file with the Tribunal and serve on the Respondent (via the general address for the Home Office Specialist Appeals Team) further evidence relating to the nature of the proceedings based on the domestic violence allegation made against him by his ex-partner which led to the Court appearance in August 2014, any further proceedings arising from that allegation, any court orders made and confirming whether any criminal charges were brought and if so whether those charges were dropped or the Appellant acquitted.
- (11) By 4pm on Friday 22 September 2017, the Appellant is to file with the Tribunal and serve on the Respondent (via the general address as aforesaid) an up-to-date letter from the Appellant's family law solicitors setting out the up-to-date position in relation to the contact proceedings (so far as it is possible to do so within disclosure obligations in family proceedings in Scotland).
- (12) This appeal will be listed in order to re-make the decision before Upper Tribunal Judge Smith on the first available date after 30 September 2017 (also to the convenience of the Appellant's Counsel). Time estimate is half day. A Wolof interpreter is to be booked for the hearing. Any application for an adjournment of the hearing should be placed before Upper Tribunal Judge Smith for decision.



Signed

Dated

30 June 2017

Upper Tribunal Judge Smith