



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09752/2016

THE IMMIGRATION ACTS

Heard at Field House
On 10th July 2018

Decision & Reasons Promulgated
On 6th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

OMARI [O]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Chukwu, Cardinal Hume Centre

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant born on 10th November 1993 is a citizen of Trinidad and Tobago. The Appellant was represented by Mr Chukwu. The Respondent was represented by Mr Kotas a Presenting Officer.

Substantive Issues under Appeal

2. The Appellant entered the United Kingdom on 16th July 2006 as a visitor. He overstayed. On 24th August 2015 the Appellant applied for leave to remain on the basis of his family and private life. His application was rejected as invalid on 3rd September 2015. On 16th November 2015 he made a further application on the same basis and that was refused on 24th February 2016. The matter was reconsidered following the issue of a pre-action Protocol and a fresh refusal decision was issued in identical terms on 6th April 2016 with an in country right of appeal. The Appellant had appealed that decision. The appeal was heard by Judge of the First-tier Tribunal Courtney sitting at Hatton Cross on 14th March 2018. He had dismissed the Appellant's appeal.
3. Application for permission to appeal was made on 9th April 2018. Permission to appeal was granted by Judge of the First-tier Tribunal Hollingworth on 3rd May 2018. It was said that it was arguable the judge should have made findings in relation to the credibility or otherwise of the Appellant's partner and that the potential failure to state whether the evidence of the partner was accepted or not may have infected the issue as to whether or not there was a parental relationship between the Appellant and [MB]. Directions were issued for the Upper Tribunal to firstly consider whether an error of law had been made by the First-tier Tribunal and the matter comes before me in accordance with those directions.

Submissions on Behalf of the Appellant

4. I was referred to a skeleton argument produced on the Appellant's behalf and that and the permission grounds were adopted. It was submitted that the issue under Article 8 was whether family life existed or not with the Appellant's partner and with the child. It was further said that the judge had firstly looked at whether the case came within the terms of the Immigration Rules and in particular whether EX.1 applied in this case. It was submitted the judge had omitted all key issues relating to the relationship and the duties performed by him at home and there had been no assessment of the credibility of the evidence provided by the Appellant's partner. It was submitted the Appellant had accepted the child as being his own and lived with the partner.

Submissions on Behalf of the Respondent

5. It was submitted that the judge had looked correctly at matters within the Immigration Rules and had found that they were not engaged and had therefore considered the case outside of the Rules. In terms of the alleged parental relationship it was submitted that when one examined the evidence in the case in particular that provided by the Appellant and his girlfriend in their own witness statements, very little indeed was said in respect of that alleged relationship. It was further submitted that in this case given that there was present the natural father who had contact with the child, it was difficult to see how the Appellant could essentially step into the shoes of that parent.

6. At the conclusion I reserved my decision to consider the submissions raised and the evidence in this case. I now provide that decision with my reasons.

Decision and Reasons

7. The judge at paragraph 18 had noted the requirements to consider as a primary consideration the best interests of the child under Section 55 of the Borders Act 2009 and the relevant case law. He had noted, as in the Appellant's case, that such consideration was not limited to blood relations.
8. The judge had looked at the Appellant's application firstly within the Immigration Rules. He had found for adequate reasons given that there were not very significant obstacles to the Appellant's re-integration into Trinidad and Tobago under paragraph 276ADE(vi). In terms of Appendix FM paragraph EX.1 the judge had noted the Appellant at the relevant date did not fall within the definition of GEN.1.2 in respect of either a partner or of a child (E-LTRPT.2.2). Accordingly, the Appellant did not meet the requirements of the Immigration Rules.
9. At paragraph 30 onwards the judge had looked at the totality of the evidence under Article 8 outside the Rules. He identified relevant case law at paragraph 30 and the requirement to consider Section 117 of the 2002 Act at paragraph 31.
10. In this regard the judge had noted at paragraph 33 that on many occasions social workers had impressed the Appellant and those caring for him that the Appellant's position within the United Kingdom following the end of his lawful leave as a visitor remained either unlawful or precarious.
11. It is said that the judge had made no findings upon the credibility or otherwise of the evidence of the Appellant's partner. Central to the decision was whether the Appellant has a genuine and subsisting parental relationship with [MB] in order for the judge firstly to properly consider the best interest of the child, as noted above, and also for a proper consideration of Section 117B(6) of the 2002 Act. He had identified the case of **R v RK [2016] UKUT 00031** as providing useful guidance on the question of "parental relationship".
12. He had examined the evidence available in respect of this matter at paragraph 37 onwards. He had, for reasons given, placed little weight on statements from the partner's own parents. He had noted the oral evidence of [KB] (the partner) as to the extent of that which she said the Appellant did with [MB]. He noted there were no letters from the school to confirm the assertion the Appellant was involved in picking up the child from school. He noted the extent and in reality the lack of photographic evidence showing the Appellant and [MB] together over time. He noted the lack of documentary evidence demonstrating the Appellant lived with [KB]. He further noted her evidence regarding the contact between the child and the child's natural father and finally the lack of evidence of the Appellant making any important decisions connected with the child's life.

13. It is right that at no stage did the judge specifically say whether or not he found the evidence of the partner to be credible or otherwise. In reality there did not appear to be any need to make such an assessment as the judge was focused on the evidence presented before him including that presented by the partner in writing and oral evidence and evidence that simply was not present. There was no suggestion that the judge rejected the partner's evidence nor in the absence of any specific findings on credibility could it be properly inferred that he did not accept her evidence. His focus was on the extent of the evidence presented and in particular, being central to his consideration in this case, whether that demonstrated that the Appellant had a parental relationship with the child. The only evidence of [KB] that he did, by inference, not accept was her assertion that the Appellant was "almost like the child's father". However, that is an understandable turn of phrase but the requirement for the judge was to look at whether the evidence presented demonstrated that the Appellant had indeed demonstrated on balance that he had a genuine and subsisting parental relationship.
14. At paragraph 44 the judge did not find the evidence demonstrated the Appellant had that "parental relationship" nor did he find the relationship with [KB] and [MB] amount to family life within Article 8.
15. The judge's assessment of Article 8 outside of the Rules demonstrates that he was aware of the evidence presented before him and had carefully assessed that evidence. He gave little weight to some evidence for reasons explained. His analysis and consideration of the evidence was adequate and he was entitled to conclude that the sum total of that evidence did not demonstrate the Appellant met the "parental relationship" test as indicated in the case of **R v RK**. He had quoted from that case and had noted paragraph 43 where it was said:

"An individual must step into the shoes of a parent in order to establish a parental relationship. If the role they play whether as a relative or friend of the family is as a caring relative or friend but not so as to take on the role of a parent it cannot be said that they have a parental relationship".
16. It is clear that the judge concluded for reasons given that the Appellant did not come within that concept of having a parental relationship with [MB] and therefore did not come within the terms of Section 117B(6) of the 2002 Act. He had looked at the evidence presented regarding the Appellant's relationship with [KB] and her daughter in terms of being part of the Appellant's private life as well as simply family life. He was obliged to consider all aspects of the 2002 Act and at paragraph 49 he concluded that Section 117B(4) and (5) indicated that little weight should be attached to the Appellant's private life when developed at a time when his status in the UK was either unlawful or precarious. He was obliged to give that due consideration and in all the circumstances he was entitled to conclude that the removal of the Appellant was not disproportionate.

Notice of Decision

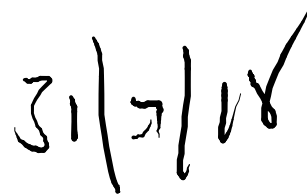
17. There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

No anonymity direction is made.

Signed



Date

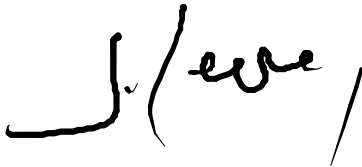


Deputy Upper Tribunal Judge Lever

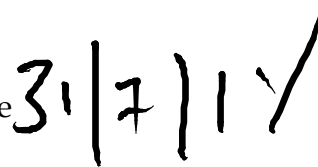
TO THE RESPONDENT
FEE AWARD

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

Signed



Date



Deputy Upper Tribunal Judge Lever