Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10366/2016

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 4 January 2018	**On 6 February 2018**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

FOYSOL [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A J Bradley, Peter G Farrell Solicitors
For the Respondent: Miss R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Hetherington promulgated on 22 March 2017. In that decision the judge dismissed the appeal against the decision of the respondent made on 30 March 2016 to refuse him leave to remain pursuant to Appendix FM and paragraph 276ADE of the Immigration Rules and to refuse his human rights claim.

2. The appellant's case is that he is in a genuine subsisting relationship with his partner, Miss [T] and has a genuine, parental relationship with Miss [T]'s daughter born in January 2015 and that they all live together as a family.

3. The Secretary of State was not satisfied that the appellant was in a genuine subsisting relationship with Miss [T] given the absence of evidence of cohabitation for a period of two years nor was she satisfied that there was a genuine parental relationship with the child. She was also not satisfied that the appellant met the requirements of paragraph 276ADE of the Immigration Rules.

4. After reviewing the evidence which included the oral evidence of the appellant and Miss [T], as well as letters from Miss [T]'s father and other supporters, concluded that [15] he was not satisfied that the appellant enjoys family life within the meaning of Article 8 with Miss [T] and her child as he was not satisfied that the relationship was akin to a marriage. He did, however, accept that Miss T supports the appellant financially and that he provides some childcare for the child.

5. The judge accepted that if the appellant were to return to Bangladesh there would be a break in continuity of care of the child and it would be better for the appellant and Miss [T] if that did not happen [17] and also [13] that it was unreasonable to expect the child to go with the appellant and Miss T to Bangladesh [13].

6. Applying Section 117B of the Nationality, Immigration and Asylum Act 2002 the judge concluded [noting the appellant had had a precarious immigration status for many years], that the decision was proportionate [31] because the personal circumstances of the appellant, Miss [T] and the child do not identify a compelling or other argument that outweighs the public interest.

7. The appellant sought permission to appeal on the grounds that the judge had erred:-

   (i) in failing to give proper reasons for rejecting the documentary evidence in support of the claim from people who had known the appellant to be in a relationship for two or two and half years and that they had lived together; and, that this is inconsistent with the exceptions that Miss [T] supports the appellant financially and provides childcare for the child, simply stating that the witnesses had failed to attend being an insufficient basis for rejecting the evidence;

   (ii) in failing to set out whether he accepted the evidence of the appellant and the sponsor that they had been cohabiting.

8. Permission was granted by Upper-tier Tribunal Judge Reeds on 20 November 2017. Judge Reeds noted that there appeared to be no reasons given as to why the judge concluded that there was no genuine parental relationship with the child, the fact that she was not the biological child not being determinative.

9. In a response pursuant to Rule 24 the respondent averred that the judge was entitled to reach the conclusions made and that even if the appellant had demonstrated a

parental relationship this was simply one factor in the proportionality assessment which could have been outweighed by the adverse features in the appellant's case.

10. As Mr Bradley submitted, the refusal letter does turn on a core issue which is the lack of evidence of cohabitation. The judge does not reach any finding on that, finding only that there is no Article 8 family life. He does not, however, reach any conclusions about the veracity of the evidence of the appellant and Miss [T], merely rejecting the case on the lack of documentary evidence without factoring into the account the fact that there would be little documentary evidence in respect of the appellant, given his irregular status in the United Kingdom. Whilst it may have been open to the judge to describe the individual pieces of evidence as bearing little weight, what the judge has not done is looked at them as a whole. Given the number of individuals who have provided details of their identities and have provided letters in support confirming certain aspects of the case it was incumbent on the judge to explain why other than the fact that they did not travel 200 miles to the court to attend to give evidence, he attached little weight thereto.

11. Further, while the judge appeared to have attached little weight to the evidence in respect of confirmation of cohabitation, he does not explain why he accepted that Miss [T] supports the appellant and that the appellant provides childcare. Further, if the couple were not in a relationship it is not at all clear why this arrangement would exist, despite Miss Pettersen's submissions to the contrary, I do consider that the judge's approach to the evidence is inconsistent and whilst it would have been open to the judge to accept some parts of the evidence, yet reject others, reasons for so doing would need to have been provided and there are none.

12. With regard to the child, the judge appears not to have considered that there could be a parental relationship absent the blood tie. That is apparent from what he says at [18] and also at [29]. It is not in dispute that the appellant is not the biological father of Miss [T]'s child but that is not determinative – see **R (on the application of RK) v SSHD (s117B(6): "parental relationship") IJR [2016] UKUT 31 (IAC)**. It is not possible to infer from the judge's reasoning whether or not he considered that the biological relationship was a necessary factor but it appears to be the case that he has done so. Again, there appears to be no reasoned basis for the judge not accepting a parental relationship or the closeness of the relationship between the appellant and the child. This question is also in a sense coloured by the finding about the nature of the relationship between the appellant and Miss [T].

13. I have, however, considered whether the errors are such that they affect the outcome of the appeal. As Miss Pettersen submitted there are a significant number of factors in the public interest militating against the appeal being allowed. Many of those are addressed by the judge in the decision at [22] to [30]. The difficulty with that line of argument is the ambiguity in the findings about the child and the reasonableness of the child being expected to go to Bangladesh or for that matter be separated from the appellant. Whilst there are considerations [17] as to the best interests of the child, these are predicated on the assumption that there is not a parental relationship.

14. Taking all of these factors into account I am satisfied that the errors made by the judge are material and will require a remaking of the decision in its entirety. I therefore remit the decision to the First-tier Tribunal.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I remit the decision to the First-tier Tribunal for a fresh decision on all issues.

Signed Date 2 February 2018

Upper Tribunal Judge Rintoul