



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/25959/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 2 August 2018

Decision & Reasons Promulgated  
On 11 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Claimant

and

MR M T  
(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Claimant: Mr A McVeety, Senior Presenting Officer

For the Respondent: Mr D Balroop, counsel, instructed by Greenland Lawyers LLP

**DECISION AND REASONS**

1. The Respondent a national of Ghana, date of birth 5 July 1982 applied for leave to remain as a parent on 26 April 2016. The Claimant's (hereafter referred to as the Secretary of State) decision was dated 9 November 2016 and rejected the Respondent's (hereafter referred to as Claimant) application.

2. The Claimant's appeal came before First-tier Tribunal Judge Eldridge who on 22 March 2018 allowed his appeal on Article 8, ECHR grounds. Permission to appeal was given by First-tier Tribunal Judge P J M Hollingworth on 12 May 2018.
3. The Claimant has three children, who are British nationals, in the United Kingdom. They are respectively about 13, 12 and 11 years of age at the date of the Judge's decision. Their mother with whom the children live has become estranged from the Claimant. There is or was before the Judge no evidence from the estranged partner as to the role that the Claimant plays in the lives of the children. There was no evidence of any decisions which the Claimant makes concerning the children's development, health and other matters which might otherwise form part of parental decision making on a shared or individual basis.
4. There was no direct evidence heard before the Judge as to the actual relationship between the children: Although there was a letter written by a third party concerning the extent to which through the church they knew of something of the matter. Their praise of the Claimant as a good parent was inevitably untested but the Judge accepted it was some corroboration of the Claimant's concerns for his son's spiritual wellbeing.
5. The driver to the Judge's conclusion was that the Claimant had since 2015 obtained through the courts a contact order which gave him, the Claimant, two hours of contact each Saturday and at such other times as might otherwise be agreed: Although there did not seem to be evidence of such extensions of time in the evidence to which I have been taken.
6. The Judge concluded [D24] as follows:-

"In my judgment the Claimant has demonstrated that he is playing a limited but genuine and subsisting parental role in respect of his children in the United Kingdom. His motivation for doing so may be clouded by trying to retain his immigration status (as Judge Davidson considered to be the case in 2015) but

I consider the persistence in obtaining a court order, in ensuring that contact does take place regularly and in paying maintenance over a long period of time is all evidence of a genuine and subsisting interest in their welfare” (my emphasis).

7. Whether a genuine and subsisting interest in their welfare is akin to a genuine and subsisting parental relationship Mr McVeety argued that it was not. Quite simply the provision of finance, which may in fact be an obligation in any event, takes the matter no further and exercising occasional weekly visits to a ‘McDonald’s’ for the purposes of a meal with the three boys is insufficient to show any real, meaningful exercise of a parental relationship. Mr McVeety said by reference to the earlier views formed it was consistent with the Claimant seeking to remain in the UK reliant upon the relationship with the three British national children.
8. The Judge plainly had that issue in mind but the criticism made is that really the Judge has failed to give a proper analysis of whether a parental role was actually being played by the Claimant in the lives of the children.
9. The Judge also made reference to the fact that the eldest child had written a letter, albeit short, in which he confirmed that his father picks the children up on Saturdays, presumably takes them for their McDonald’s experience, and that he wanted his father to stay in the UK. As the Judge also notes that son is the only family member who has written and there was nothing from the children’s school concerning parental involvement and nothing from those who know him, one may infer, to support the Claimant’s claim, that is from other third parties, other than the pastor referred to.
10. I conclude having heard the submissions that the Judge’s analysis of the parental relationship is not sufficient and adequate. There clearly is a decision but simply the fact of exercising a contact order may to some be sufficient but of itself bearing in mind the evidence was actually put forward in the statement to which I have been taken and the absence of input from the children’s mother, his ex-partner, as to any decision

making role he is playing undermines his claim to be actively exercising a genuine and subsisting parental relationship with the children.

11. Accordingly I conclude in the absence of sufficient and adequate reasons the Original Tribunal's decision cannot stand. The parties are agreed that the matter should be remade in the First-tier Tribunal, IAC and I agree with them that that in the light of the need for clear findings of fact not just on the best interests but also their relationship, it seemed to me that is all part that ought to be considered in a remaking of the Article 8 ECHR claim. It is not of course suggested that the children need to remove with the Claimant but the exercise of assessing proportionality does need to be properly done.

### **NOTICE OF DECISION**

12. The Original Tribunal's decision does not stand and to that extent the matter is returned to the First-tier Tribunal to be determined in accordance with the law.

### **Anonymity Order**

An anonymity order was made and that should be continued.

### **DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

Unless and until a Tribunal or court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Claimant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Dated 20 August 2018

Deputy Upper Tribunal Judge Davey