



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number HU/09268/2017

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 21st February 2019

Decision and Reasons Promulgated
On 13th March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

R W
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Jegarajah (Counsel, instructed by IMK Solicitors)
For the Respondent: Mr McVeety (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's application for leave to remain on the basis that he was in a parental relationship with his partner's child was refused. The appeal was heard by First-tier Tribunal Judge Raikes who dismissed the appeal in a decision promulgated on the 7th of February 2018. Permission to appeal was refused by the First-tier Tribunal in June 2018 but granted on renewed application by the Upper Tribunal which explains the delay in the appeal being heard.
2. The appeal was dismissed with the Judge finding that the Appellant did not meet the definition of a parent in paragraph 6 of the Immigration Rules, the reasoning is set out in paragraphs 46 and 47. In paragraph 56, for reasons given in the preceding paragraphs, the Judge accepted that there was a relationship between the Appellant and his partner's daughter but that it was not a genuine and subsisting parental relationship.
3. The grounds are set out in full in the Tribunal papers. The first ground is that the Judge erred in respect of the Appellant being a parent relying on the case of VC [2017] EWCA Civ 1967 and the guidance given in that case. It is also argued that the Judge's decision with regard to the role of the child's biological father was perverse.

4. At the start of the hearing Mr McVeety accepted that there was an error with regard to the question of the Appellant being in a parental relationship with his partner's child. He referred to the case of the R (on the application of RK) v Secretary of State for the Home Department (s.117B(6); "parental relationship") IJR [2016] UKUT 31 (IAC).
5. There followed some debate as to whether the decision should be allowed or remitted to the First-tier Tribunal. Ultimately Mr McVeety accepted that on the basis of the findings made by the Judge in relation to the child involved it would not be reasonable to expect them to leave the UK. At the hearing I indicated that in the light of the unchallenged findings made by the First-tier Tribunal Judge I would set-aside the decision which would be remade and allowed.
6. That approach has been vindicated by the more recent decision of JG (s 117B(6): "reasonable to leave" UK) Turkey [2019] UKUT 72 (IAC). As that case makes clear even if the child involved in reality will not be leaving the UK if the answer to the hypothetical question is that to expect the child to leave would be unreasonable then the terms of the statute are met.
7. Combining the concessions made by Mr McVeety, that the evidence showed that the Appellant had a genuine and subsisting relationship with a qualifying child and that it would not be reasonable to expect the child to leave the UK the Appellant meets the requirements that answer the article 8 balancing exercise and his appeal has to succeed.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

I remake the decision allowing the appeal of Appellant.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

In allowing this appeal I make a fee award in the sum of £140.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 12th March 2019