



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

Appeal Number: HU/12079/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 6 June 2019**

**Decision & Reasons Promulgated
On 19 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

**MF
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chohan, counsel.

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

An order has been made under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead to the appellant or his child being identified. Failure to comply with this order could lead to a contempt of court.

1. This is an appeal by the appellant against a decision of the First-tier Tribunal issued on 8 January 2019 dismissing his appeal against the

respondent's decision dated 16 May 2018 refusing him further leave to remain on the basis of his family life with his British citizen child.

Background.

2. The appellant is a citizen of Pakistan born on 1 December 1981. His immigration history can briefly be summarised as follows. He was initially granted leave to enter as a visitor on 20 July 2008 valid until 20 July 2009. In 2008 he married his wife, but they separated in November 2010. Their child, a daughter, was born on 12 June 2011.
3. He last entered the UK on 13 September 2012 with a Tier 4 visa, valid until 20 December 2013, and was subsequently granted extensions until 31 December 2015. However, on 13 August 2015 his leave was curtailed to expire on 25 October 2015. On 23 May 2017 he was served with removal papers.
4. The appellant claims that he had irregular contact with his daughter when he was in the UK between 2012 until February 2017 when contact was stopped. He applied to the Family Court for a Child Arrangement Order on 20 September 2017 and then on 22 November 2017 made his application for further leave to remain. This was refused for the reasons set out in the decision of 16 May 2018. The respondent was not satisfied that the appellant could meet the requirements of the Rules or that there were exceptional circumstances justifying a grant of leave under article 8.

The Hearing before the First-tier Tribunal.

5. At the hearing before the First-tier Tribunal it was submitted that the sole issue at that stage was to seek further leave to remain so that the Family Court proceedings could be completed in which the appellant was seeking contact with his daughter [11].
6. The judge referred to RS (Immigration and Family Court proceedings) India [2012] UKUT 218 setting out at [12] the guidance by the Upper Tribunal on the issues to be considered in immigration cases where family proceedings were pending. At [13] the judge made the following findings in respect of the questions posed in RS (set out at 12(1)). She was satisfied the outcome of the Family Court proceedings initiated by the appellant would be material to his appeal; she was not aware of any public interest reasons to exclude the appellant from the UK irrespective of the outcome and she found that the appellant had not initiated contact proceedings to delay or frustrate his removal or for a reason contrary to his daughter's welfare [13].
7. The judge then said at [14] that RS required her to consider, when answering those questions, the degree of the appellant's interest in and contact with the child. She said that the appellant had not detailed what "irregular contact" meant and had not provided any evidence to support

his claim to have enjoyed access to his daughter or that he had a parental relationship with his daughter. Further, he had failed to explain the seven-month delay before making his application to the Family Court. He could maintain contact by telephone or Skype and pursue contact proceedings from abroad. The judge said that, taking these factors together, the appellant had not shown that he had a parental relationship with his daughter or that he could meet Appendix FM of the Rules as a parent or the provisions of para EX.1.

8. The judge went want to consider the appellant's private life and whether there were exceptional circumstances such that a refusal under article 8 would lead to unjustifiably harsh consequences for him or his child. She found that there were no such circumstances. Accordingly, the appeal was dismissed.

The Grounds of Appeal and Submissions.

9. In the grounds of appeal, it is argued that the judge erred in concluding that there was no evidence of contact as there was such evidence in the appellant's own evidence and in the letter from his previous representatives. She had disproportionately focused on whether there had been previous contact and had failed to give proper weight to her finding that there was no public interest in excluding the appellant, who, in any event, not been required to show that he was in a parental relationship. She had also erred by saying that the appellant could maintain contact by Skype and in finding that he could engage in family proceedings from abroad.
10. Permission to appeal was granted by the First-tier Tribunal on the basis that in the light of the judge's positive findings in [13], it was arguably perverse to proceed to determine issues relevant to family life under the Rules and article 8 when the Family Court was arguably in a better position to do so.
11. Mr Chohan adopted those grounds. He submitted that, having made the findings in [13], the proper course would have been either to allow the appeal so that a short grant of leave could be granted to enable the family proceedings to be completed or, alternatively, to adjourn the hearing until those proceedings were concluded. Mr Bramble did not seek to resist the appeal accepting that the judge had erred in law as set out in the grounds and in particular by treating the factors set out in [12(2)] as separate from those in [12(1)].

The Error of Law.

12. I am satisfied that the judge erred in law as set out in the grounds and that Mr Bramble's concession is properly made. Having made the findings in [13], I am satisfied that the judge erred by assessing separately the issues set out in [12(2)] when they were factors to be taken into account in

considering how the questions set out in [12(1)] were to be answered. Once those findings had been made, having taken into account the factors in [12(2)], the judge should then have addressed the issues in [12(3)]. The error of law is such that the decision should be set aside.

13. Both parties submitted, and I agree, that the appeal should be remitted to the First-tier Tribunal for the decision to be re-made. Although it is a matter for the First-tier Tribunal how the hearing should proceed, on the evidence currently available, this appears to be an appropriate case for a case management review to consider the position more fully in the light of the pending proceedings in the Family Court.

Decision.

14. The First-tier Tribunal erred in law and the decision is set aside. The appeal is remitted to the First-tier Tribunal for reconsideration by way of a rehearing by a different judge.
15. In the light of the fact that there are related Family Court proceedings pending, I am satisfied that this is a proper case for an order to be made under rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and I make an order prohibiting the disclosure or publication of any matter likely to lead to the child or any family member being identified.

Signed: H J E Latter
June 2019

Dated: 14

Deputy Upper Tribunal Judge Latter