Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number
HU/15236/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 21st February 2019

Decision and Reasons Promulgated
On 14th March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

K H
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms Hasmi (Solicitor, Mamoon Solicitors)
For the Respondent: Mr McVeety (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's appeal against the Secretary of State's refusal of his application to remain in the UK on the basis of his private and family life was heard by First-tier Tribunal Judge M Davies at Manchester on the 25th of September 2018. The Judge rejected the credibility of the Appellant and his wife for the reasons given in paragraphs 42 to 45 of the decision. The Judge found that the Secretary of State had discharged the burden of showing that the Appellant had used false documents in a previous application, having used deception the Appellant could not meet the Immigration Rules.

2. The Judge went on to find that the Appellant had moved back to live with his wife and their children for the purposes of the appeal and that the relationship was not genuine or subsisting. Little weight was given to the Independent Social Worker's Report (ISWR) as that had not addressed the issue of their living together. In the circumstances the Judge found that the Appellant's removal would not engage article 8. There were no insurmountable obstacles the family returning to Pakistan and if article 8 was engaged then removal would be proportionate. At paragraph 53 the Judge found that it would be reasonable for the children to leave the UK.

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3. The Appellant sought permission to appeal arguing that had not considered MA (Pakistan) that leave should be granted unless there were powerful reasons to contrary, the Judge had failed to give findings in relation to the Appellant's access to his children, whether he lived with them or not, the ability of the Appellant's wife to speak English was not relevant and the Judge had not properly considered the children's best interests. Permission was granted on the basis that it was arguable that there had not been an independent assessment of the children's best interests and in taking account of the Appellant's wife's lack of English or that article 8 was not engaged or with regard to the Appellant's access/contact with his children. There was no rule 24 response from the Home Office but it was indicated that the Appellant's application was opposed on all grounds.

4. For the Appellant it was submitted that the finding at paragraph 53 that there was a genuine and subsisting parental relationship contradicted previous findings. The ISWR had not been considered in its entirety. The children had been interviewed with and without the parents and it was indicated that removal would have a detrimental effect on them, there were no findings. The Appellant's wife does not speak English but the Appellant does, the findings made no sense. The Judge had not dealt with access to the children and his role in their upbringing. It was submitted that it was in the children's best interests to remain with both parents, the Judge had not explored what they would face if the Appellant was removed or if they were to leave with him.

5. For the Home Office it was submitted that the Judge had not been asked to make any findings on the question of access. It had been claimed that the Appellant lived in the same house and household but he had found that they did not. The finding that the Appellant was not in a genuine and subsisting relationship had not been challenged in the grounds. Paragraph 53 was an alternative finding. The grounds did not cover the Appellant's previous deception and the negative credibility findings were not challenged. The ISWR said nothing and did not address what was actually being told.

6. In reply and referring to KO (Nigeria) [2018] UKSC 53 it was submitted that the Appellant's conduct was not close enough. He did not accept the deception and his conduct was not criminal. It was submitted that the Appellant met the Immigration Rules and the appeal should succeed. At the end of submissions I indicated that if I found that there was an error I would remit the decision to the First-tier Tribunal and would consider remitting the hearing to Judge Davies on the basis that there were significant unchallenged findings and the exercise would be limited.

7. Since the hearing the Upper Tribunal has published the decision in JG (s117B(6): "reasonable to leave" UK) Turkey [2019] UKUT 72 (IAC). I have considered the effect of that case in addition to the guidance in KO (Nigeria) [2018] UKSC 53. A decision is to be read on the basis that the Judge knew what he was doing, it is to be read fairly and as a whole without taking matters out of context and with indulging in "narrow textual analysis", a practice deprecated by the Court of Appeal. It is only if the decision shows that the Judge failed to carry out a necessary function that an error can be found and the necessary corrective action taken. It is not necessary for the Judge to set out the applicable law, it is necessary that the law is shown to have been applied.

8. It is ordinarily in the best interests of a child to live with both parents in a stable and caring environment, that is not a controversial proposition nor does it need a social worker to give evidence to that effect. It is also obvious that relocation will cause disruption in a child's life and that may have an effect on the child's education and development but that appropriate parental support may assist the process. Children are moved around globally at their parents' behest on a daily basis. All things being equal the fact of moving is not itself an issue, evidence would be

needed to show that there were circumstances relating to the best interests of a child that outweighed any public interest that arose.

9. For the reasons given in paragraphs 42 and 43 the Judge found that the Appellant had used deception in regard to the use of the degree certificate purportedly from the University of Greenwich. As that has not been challenged in the grounds the finding stands. In paragraph 41 the Judge rejected the credibility of the Appellant and his wife. The submission by the Appellant's representative on the point is not relevant as there is no challenge in the grounds nor was there an application to amend the grounds before the Upper Tribunal. That finding would not by itself justify a rejection of the other evidence in the case but was a factor that the Judge would be entitled to take into consideration in assessing the evidence as a whole.

10. The family’s circumstances were considered in paragraphs 43 to 45, the relevant evidence having been summarised earlier in the decision. The principal reasons are given in paragraph 44 of the decision. The discussion was brief and to the point and the Judge had regard to the evidence relevant to the family’s history and their applications. These findings have not been challenged in the grounds and so remain as the Judge’s decision on the evidence presented.

11. Paragraph 4 of the grounds states “The Honourable Judge has failed to give his findings in relation to the Appellant's access to his children whether he lives the or not, but he clearly has access to them.” The Judge had given his findings in regard to the living arrangements rejecting the claim made that he was living with the children’s mother and the children in a genuine and subsisting relationship. The assertion in paragraph 4 does not bear any relation to the decision itself and makes a basic assertion contrary to the actual decision.

12. In rejecting the Appellant's claim to be genuinely living with his wife and family, an unchallenged finding the Judge was entitled to make, there was no evidence relating to the alternative scenario the grounds rely on that the Appellant had contact with the children and played an active role in their lives. Any decision on that issue would have been speculation by the Judge and open to challenge on that basis. the failure of the ISWR to address the Home Office case and report accordingly justified the Judge in attaching little weight to it.

13. Given the observations in paragraph 12 above paragraph 53 of the decision is clearly a finding in the alternative. It is on that alternative basis, i.e. the assumption that a genuine and subsisting parental relationship exists that the Judge addressed the issue of removal. Paragraph 53 has the effect of answering section 117B(6) as required and the Judge’s finding that it would be reasonable to expect the children to leave the UK was open to him on the limited evidence presented.

14. The fact that the Appellant's wife does not speak English is hardly a significant point made in the decision but cannot be said to be irrelevant. Being unable to speak English the implication is that their mother has to speak to them in a language that they both understand. That would be Urdu and so have a bearing on the children’s ability to integrate into Pakistan. How the Appellant came to be without leave was not relevant to any proportionality assessment but was a basic fact which counted against him. To succeed evidence demonstrating that there were compelling circumstances justifying a grant of leave would have to be identified, the Judge found none and the grounds do not point to any.

15. It might have helped if there had been a separate section dealing with the legal issues to be addressed even if only in summary but at various points within the decision the Judge did refer to the matters that had to be addressed. In paragraph 42 the Judge referred to the burden being on the Secretary of State where deception was being alleged, in paragraph 39 the Judge referred

to the children's best interests and the considerations in relation to article 8 were set out in paragraph 7.

16. The decision has to be read fairly and as a whole without taking matters out of context, not on the basis of narrow textual analysis and on the assumption that the Judge knew what he was doing. It was for the Appellant to provide reliable evidence to justify findings of fact relied on and the Judge was entitled to find that he had not done so. In rejecting the claim that the family were genuinely living together, I repeat a finding not challenged, the Judge was not obliged to speculate on alternative positions for which there was no evidential basis. In any event the Judge did consider the alternative position in that the question of a genuine and subsisting relationship with the children was considered, the Judge was entitled to find that it would be reasonable to expect them to leave the UK. Although the decision could have been phrased more helpfully that is not an error, the grounds and oral submissions do not show that the Judge erred in the approach taken or the findings made.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

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 dismissing this appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 11th March 2019