Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/18649/2018**

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 22 August 2019 **On 06 September 2019**

Before

UPPER TRIBUNAL JUDGE PITT

Between

MR RAY ISHAM KERMANI FEVRIERE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Wass of Counsel instructed by TMC Solicitors
For the Respondent: Mr Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision dated 12 April 2019 of First-tier Tribunal Judge Richardson which refused the appellant's appeal brought on Article 8 ECHR grounds.

2. The appellant is a citizen of St Lucia, born on 26 July 1989.

3. Most of the evidence in this appeal was not disputed. The appellant applied to join the British Army and was accepted, entering the UK in October 2016. However, during his initial training it was found out that he had a serious allergy to shellfish. The army found that this was a matter sufficiently serious for him to not to be able to serve and the appellant was

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informed on 3 January 2017 that he would be discharged. His official discharge took place on 12 September 2017. By that time the appellant had formed a relationship with a British national, Ms Beer and her two children from a previous relationship. On the basis of those relationships, the appellant applied for further leave to remain on Article 8 ECHR grounds on 7 October 2017.

4. The application was refused by the respondent on 23 August 2018. The appellant appealed and had a hearing before the First-tier Tribunal on 26 March 2019. As above, the First-tier Tribunal refused the Article 8 appeal in a decision dated 12 April 2019.

5. The First-tier Tribunal set out the appellant's case, stating in paragraph 12:

> "Shortly after arriving in the United Kingdom the Appellant met Ms Beer. She is a British citizen and has two children who are also British citizens although by different fathers who are involved with their respective children's lives. The Appellant lives with his sister near to Ms Beer and visits Ms Beer's home daily as it is a few minutes away. He is actively involved with the children who have grown very attached to him. The Appellant treats the children as if they are his own and is always there for them, spending a lot of time with them. His departure from the UK would have an adverse effect on them especially the youngest, who has had some behavioural problems which had been improving since the Appellant's involvement in her life."

6. At paragraph 16 the judge recorded the evidence of Ms Beer as follows:

> "Ms Beer is in employment. The Appellant has helped her with the children and has spent a considerable amount of time with her children. The children would be devastated if the Appellant had to leave the UK because they are used to him being around and so spending a lot of time with him. Ms Beer would not be able to go to St Lucia with the Appellant <u>because she could not take the children away from their respective fathers</u>. (my emphasis)"

7. The judge went on to make findings on the appellant's relationship with the children in paragraph 30 of the decision:

> "30. I accept the Appellant's evidence that Ms Beer's children have become attached to the Appellant and that he has a positive influence on their lives. He does not however have any parental responsibility for the children <u>who each continue to see their respective fathers</u>. It is understandable that children who become attached to an individual over a period of time, in this case over two years, will be upset on separation but there was no medical or social welfare evidence that the Appellant's departure would have a detrimental effect on the welfare of the children and their development any more than the day-to-day absence of and limited contact with their respective birth fathers which the children have experienced. Children are resilient and children in the army in particular must become used to fathers being absent for periods of time. There are modern methods of

communication such as Skype by which contact visual and oral can be maintained. (my emphasis)"

8. The judge also considered the best interests of the children in paragraph 39 of the decision:

> "39. Turning them to the question of the children and their best interests. They will be disappointed and saddened by the absence of the Appellant but there was no evidence of sufficient weight that the Appellant's absence in their lives, would have a permanent detrimental effect on their welfare and development. The Appellant can maintain contact with the children through modern methods of communication on a frequent basis which would ameliorate any sense of loss that they would initially feel."

9. The appellant objects to these findings on the basis that the judge took an incorrect approach by only assessing whether the appellant had "parental responsibility" and not whether he had a "genuine and subsisting parental relationship" with the children, the first part of the test from paragraph 117B(6).

10. The appellant also sought to rely on the ratio of R (on the application of RK) v Secretary of State for the Home Department (Section 117B(6); "parental relationship") IJR [2016] UKUT 00031. The headnote of that case reads as follows:

> *"1. It is not necessary for an individual to have "parental responsibility" in law for there to exist a parental relationship.*
>
> *2. Whether a person who is not a biological parent is in a "parental relationship" with a child for the purposes of s.117B(6) of the Nationality, Immigration and Asylum Act 2002 depends on the individual circumstances and whether the role that individual plays establishes he or she has "stepped into the shoes" of a parent.*
>
> *3. Applying that approach, apart from the situation of split families where relationships between parents have broken down and an actual or de facto step-parent exists, it will be unusual, but not impossible, for more than 2 individuals to have a "parental relationship" with a child. However, the relationships between a child and professional or voluntary carers or family friends are not "parental relationships"."*

11. I did not find that the decision of the First-tier Tribunal disclosed an error on a point of law regarding the assessment of appellant's relationship with Ms Beer's children or the proper application of s. 117B(6) of the Nationality and Immigration Act 2002.

12. The facts before the First-tier Tribunal were that the children continued to see their fathers. Additionally, their relationships with their birth fathers were sufficiently important for Ms Beer to state that she could not go to St Lucia with the appellant because "she could not take the children away from their respective fathers". Ms Beer was not divorced from the father of the youngest child. I have emphasised the evidence showing this to be so in the extracts from the First-tier Tribunal decision set out above. The

evidence was also that the appellant had known the children for approximately two years but had never lived with them.

13. The First-tier Tribunal accepted much of the evidence of the appellant and Ms Beer but he was not obliged to take the evidence on the appellant's relationship with the children at its highest. Read fairly, the First-tier Tribunal found not only that the appellant did not have parental responsibility but that he had not "stepped into the shoes" of a parent, as set out in the second paragraph of the headnote of RK. That was a rational conclusion where the children had continuing relationships with their birth fathers that their mother wanted to protect by keeping the children in the UK. RK also indicates that it will be "unusual" for a child to have a parental relationship with a third adult in these circumstances. The judge here did not find that this "unusual" situation prevailed where the appellant did not live with the children, where they continued to see their fathers, and where their relationships with their birth father were sufficiently serious for their mother to wish them to remain in the UK to continue those relationships.

14. It is therefore my conclusion that the decision of the First-tier Tribunal took a lawful approach to the evidence concerning the appellant's relationship with Ms Beer's children and shall stand.

15. It is notable, however, that the First-tier Tribunal clearly found the appellant and Ms Beer to be highly credible and genuine people in general terms and that even if the appellant's relationship with the children could not qualify under the Immigration Rules or Section 117B(6) of the Nationality, Immigration and Asylum Act 2002, there was a good relationship with them and a genuine partnership with Ms Beer. The integrity of the appellant and Ms Beer is commented on in a number of places in the decision of the First-tier Tribunal. This will obviously be something that a decision maker will bear in mind when assessing any further applications for leave or entry clearance from the appellant.

Notice of Decision

16. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:
Upper Tribunal Judge Pitt

Date: 2 September 2019