Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00615/2020

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 March 2021	**On 22 June 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

HARVINDER SINGH
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	The appellant appeared in person
For the Respondent:	Mr T Lindsay, Senior Home Office Presenting Officer
Interpreter:	Mr S Duhre interpreted the Punjabi and English languages

DECISION AND REASONS

1. The appellant is a citizen of India. He appeals with the permission of a First-tier Tribunal Judge a decision of the First-tier Tribunal on 9 March 2020 to dismiss his appeal against a decision of the respondent on 19 November 2019 refusing him leave to remain on the basis of his private and family life in the United Kingdom.

2. The judge who granted permission was struggling with narrative grounds in manuscript prepared by the appellant but found it arguable that the judge who determined the appeal had erred in concluding there was not a "genuine and

subsisting parental relationship" between the appellant and a qualifying child. The short point is that he was having some contact with his children.

3. The appellant's immigration history is discreditable. He says that he entered the United Kingdom clandestinely on 28 December 2001. Be that as it may, he was certainly present on 3 July 2012 when he applied for leave to remain as a husband. That application was successful and he was given leave that expired on 4 September 2015. He made an in time application and his leave was extended until 29 April 2018 and then until 16 December 2020. However, on 31 July 2019 his leave was curtailed with a new expiry date of 4 October 2019 because there had been a breakdown in his relationship with his wife.

4. On 1 October 2019 he applied for leave to remain on the basis of his family and private life. The respondent treated the application was based on private life only and the decision to refuse the application was the subject of the appeal that is challenged before me.

5. As the Reasons for Refusal explained, the breakdown of the marriage meant that, according to the respondent, the family life route was not open to the appellant. However, it is a plain fact in the case that there are two children involved. The children concerned are a son who I identify simply as "M" who was born in September 2003 and so is now 17 years old, and a daughter, "G", who was born in November 2004 and so is now 16 years old. They are not the biological children of the appellant but (obviously) that does not mean that they are not enjoying a parental relationship with the appellant.

6. The respondent decided that the appellant could not meet the "suitability requirements" of the rule because on 25 November 2015 he had been cautioned for common assault and did not declare that when he later applied for leave to remain. The respondent regarded this as a failure to disclose a material fact in relation to an application.

7. The Secretary of State noted that the appellant did not claim to have lived in the United Kingdom for twenty years and so could not qualify under the provisions for people who have lived in the United Kingdom for at least twenty years. Further he failed to show that there were "very significant obstacles" to reintegration into life in India. The appellant had lived in India until he was about 19 years old and had made frequent visits there during this stay in the United Kingdom.

8. The respondent saw no reason why his ability to adapt to life in the United Kingdom could not be matched with an ability to re-adapt to life in India. The respondent looked for exceptional circumstances and noted that an earlier application had succeeded after hearing how the appellant supported his wife who was disabled but that marriage had now ended and his leave was curtailed. His wife clearly had close relatives to support her in the United Kingdom because they are identified in the papers.

9. The respondent correctly considered the needs of the children and found they were living contentedly with their natural mother. It was in their best interests to remain there and they did not need the appellant to be in the United Kingdom.

10. I consider now how the appeal was decided by the First-tier Tribunal Judge.

11. The appellant was represented by the First-tier Tribunal. The judge concluded unequivocally that the appellant had provided false information. The problem is that the appellant had been cautioned for an assault but had indicated on his application form in answer to a question about "convictions and other penalties" which made it plain that the appellant should declared any caution, warning, reprimand or other penalty. The appellant had not simply answered the question with the word "No" but expanded it to "No. I have never had any of these". The judge found that this was a lie and not simply an oversight or mistake.

12. There is no doubt that the appellant was no longer a "partner" because the relationship that been relied upon had ended. However the judge was particularly interested in the appellant's relationship with the children of his wife. The judge endorsed the criticism of the appellant's representative that the respondent had not *considered* the relationship with the children. It just did not follow that the relationship with the step-children ended with the marriage. However, the appellant did not have "sole responsibility" for the children and they did not live with him but he had some direct contact with them. The judge directed himself that the appellant must show he was intending, and continued, to take an active role in their upbringing.

13. The judge said that he accepted that the appellant was seeing the children and referred to two videos of the appellant inside their house. The videos did not show a great deal of interaction but I remind myself that they are teenage children.

14. The appellant produced evidence he had taken the children to Cineworld and Creams Café and photographed them together. The judge said at paragraph 33 that "all this however, I find, falls sort *[short?]* of the necessary evidence required to show that he is taking, and intends to continue to take, an active role in the children's upbringing".

15. Paragraph 34 of the decision and reasons is, I find, important and I set it out in its entirety:

> "The children live with their mother (who is their natural mother) and there is no evidence that anyone apart from her has any role in bringing the children up. There is no evidence of any financial support or contribution that the appellant may be giving to the children. There is nothing from the children themselves as to their perception of their relationship with the appellant. The appellant has given two contrasting reasons for this – either that the mother has demanded £10,000 before she releases their statements, or (the explanation given at the hearing) that the appellant does not want to bring the children into the appeal – but whatever the reason the Tribunal is without this evidence. The appellant has provided no evidence of ever taking an important decision on behalf of the children (such as in relation to health or education). The photos and videos are evidence of them seeing each other on occasion, but do not evidence any role in their upbringing. I find on all the evidence that the appellant does not meet the requirements of E-LTRPT 2.4(b). He has not, I find, established that he has taken on, and continues to take on, the role that a 'parent' usually plays in the life of their child. There appears in addition to be no prospect in the foreseeable future of the nature and extent of any such role developing – the mother is described as being antagonistic to the appellant and the children at the ages of 15 and 16 will be developing their own lives by now. It is not necessary to consider EX.1 because E-LTRPT 2.4(b) is a mandatory requirement irrespective of EX.1".

16. The judge then concluded there would be no very significant obstacles in the way of the appellant re-establishing himself in India. He lived there until he was 19 years old and still has parents in the country who could be expected to help him re-establish himself. He has visited India during his stay in the United Kingdom in every year from 2013 to 2019 and speaks Punjabi. Indeed the judge noted that the appellant required an interpreter to give evidence at the hearing. There was no suggestion that he had forgotten how to speak Punjabi.

17. The judge went on to look at Article 8 of the European Convention on Human Rights and set out standard appropriate self-directions of law.

18. The judge then considered the best interests of the children. The judge looked again at the finding that their upbringing was in the hands of their mother who was a British citizen. The children were then aged 15 and 16 years old and they were British citizens. Their best interests, the judge found, was "overwhelmingly to remain in the UK". The judge found that the appellant was not taking an active role in their upbringing and they were of an age when they were looking forward to independent lives.

19. The judge then reminded himself of Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 and found that the appellant had not established a genuine and subsisting parental relationship with the children. The judge accepted that there was some contact with the children but that was all. The judge dismissed the appeal.

20. Before me I asked the appellant to explain what the First-tier Tribunal Judge had got wrong. The appellant had no difficulty telling me the age of his children and said that although they were not his biological children they "grew up in my hands and care" and recently he had been having occasional contact which was considered in the decision. He touched on the reasons for the breakdown of his relationship with their mother. He said another person was involved. He repeated his claim that his wife wanted a premium of £10,000 to be more co-operative.

21. I put it to the appellant that the First-tier Tribunal Judge's findings were that whatever had gone on the appellant no longer had a parental relationship with the children. He understood the point and found it hard to criticise although insisted that he wanted a close relationship with the children who had been part of his family through most of their lives.

22. Mr Lindsay's submissions were very simple. The First-tier Tribunal Judge had considered the evidence sensibly and appropriately and had reached an entirely rational conclusion. The appellant, who was plainly articulate, was not able to add very much to what he had told me.

23. I make it plain that I make no findings on the appellant's claim that he has now lived in the United Kingdom now for over twenty years. I had no reason to determine the point.

24. What is clear is that the appellant has been married in the United Kingdom and that he lived with his wife and her children and that they were therefore in the broadest sense, part of his family. There is no or little evidence of anything that would make the

relationship "parental" rather than a supportive but lessor relationship and there is no evidence of a parental relationship now.

25. If, as sometimes happens when marriages break down, his former partner has deliberately squeezed him out of the lives of the children that is to her discredit but I do not have to decide if that has happened. I merely make the point that if it has happened then he his role in the lives of the children has diminished and the reasons for that diminution do not give him rights to remain. Family break-ups are frequently unhappy and often unhappiest for the people least at fault, but there is no evidence before me to indicate that the First-tier Tribunal Judge did anything other than make an entirely appropriate decision after careful consideration of the evidence.

26. I have reflected on the submissions and the papers with particular care because the appellant is not represented but I find no material error of law in the decision and I dismiss this appeal.

Notice of Decision

This appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 21 June 2021