



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

Appeal Number: IA/12900/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 27 January 2015**

**Determination issued
On 28 January 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

IMMIGRATION OFFICER, Gatwick North

Appellant

and

ATEF MANMOUDI

Respondent

For the Appellant: Mrs S Saddiq, Senior Home Office Presenting Officer

For the Respondent: Mr S Winter, Advocate, instructed by Livingstone Brown,
Solicitors

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.
2. The appellant is a citizen of Tunisia, born on 24 January 1985. On 24 April 2012 he was given entry clearance as the spouse of a UK citizen. He arrived in the UK on 4 April 2013, seeking entry as a returning resident. He was interviewed by the respondent on 5 April 2013. The respondent cancelled the appellant's leave to remain for reasons explained in a report dated 11 May 2013, written in response to the appellant's grounds of appeal to the First-tier Tribunal.
3. First-tier Tribunal Judge P A Grant-Hutchison allowed the appellant's appeal by determination promulgated on 18 August 2014. Although both parties were represented, neither appears to have reminded the Judge

that the burden was on the Immigration Officer to justify the cancellation of leave under the Immigration Rules, rather than on the appellant to prove his case (paragraph 10).

4. The Judge found that the appellant did not come within the Rules, which appears to have been common ground. It may be axiomatic, as the grounds of appeal to the UT state, that consideration should begin with the Rules; but the Judge does not appear to have had any help from either side in identifying the specific obstacles in the appellant's path on any route he might explore under the Rules.
5. The Judge held that notwithstanding failure to meet the requirements of the Rules the appellant had "a good and arguable case" (paragraphs 18 and 20) and that there were "compelling circumstances ... to succeed outside the Rules" (paragraph 20).
6. The Immigration Officer's grounds of appeal to the Upper Tribunal are along the lines that that the Judge failed to identify compelling circumstances not recognised by the Rules; the Judge had no regard to the appellant's statement that he was using his child [unborn at the date of his arrival; born 25 June 2013] as a means to gain entry to the UK; an hour of supervised face-to-face contact every fortnight between the appellant and his child [the situation by the date of the hearing] could not be an exceptional or compelling circumstance; and the best interests of the child could be served by her remaining in the UK with her mother, her primary carer.
7. The principles established by case law on which the grounds rely are cited in the determination, which refers also to *MS* [2013] CSIH 52.
8. The Presenting Officer submitted that the Judge went wrong by failing to explain adequately what took this case outside the Immigration Rules. The appellant's relationship with his wife had broken down, and he should not have tried to re-enter in that capacity. He had a history of a similar situation in Holland, having another child there and a visa for that country although he had never sought to have a relationship with that child. He had admitted using the child in the UK as a means to enter and settle. Mrs Saddiq accepted, however, that such was the interpretation of the respondent rather than an express admission by the appellant. The Judge had taken no real account of the appellant's history or of the public interest, although that was acknowledged at paragraph 15.
9. Mr Winter submitted that even if the outcome on proportionality appeared to be a generous one, the determination did contain reasons for its findings and the respondent's grounds amounted to disagreement rather than legal error.
10. I indicated that I was not persuaded of any legal error in the determination.

11. On a general approach to proportionality, the outcome does seem at the charitable end of the spectrum. However, the grounds do not say that it could not rationally be reached by any Judge. The Judge gives his reasons: he finds that the appellant wishes to be a good father; he raised proceedings for contact; the contact in place is modest but appropriate to the child's age; he contributes to the child's support; he could exercise no meaningful family life in Tunisia; the child might be harmed by his removal; she will benefit financially and emotionally from his presence. The grounds of attack do not fairly represent the reasons given.
12. While there may have been nothing wrong with the Immigration Officer's decision, based on the evidence at the date it was made, it was the parties' common approach in the First-tier Tribunal to address the question whether the appellant's removal as at the date of the hearing would interfere disproportionately with family life interests, namely the relationship between father and daughter. No legal error has been shown in the Judge's resolution of that point.
13. Neither party appears to have said anything specific to the Judge about part 5A of the 2002 Act, although he refers to it generally at paragraph 15. Section 117B(6) provides thus:

In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

 - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the United Kingdom.
14. The determination includes an effective finding that there is a genuine and subsisting relationship between the appellant and his child. It may be at the weaker end of the scale but it is substantial enough. That would appear on its own to justify the decision reached.
15. The determination of the First-tier Tribunal **shall stand**.
16. No anonymity direction has been requested or made.



Upper Tribunal Judge Macleman
27 January 2015