



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09403/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 29th May 2018

Decision & Reasons Promulgated
On 19th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

MR SAMUEL [O]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant appeared as a litigant in person

For the Respondent: Mr S McVeety, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge G Jones promulgated on 21st November 2017. On that occasion and indeed before me Mr [O] appears as a litigant in person. Today, the Home Office was represented by Mr McVeety, a Senior Home Office Presenting Officer.
2. The basis of the grant of appeal by First-tier Tribunal Judge Gibb noted as follows. Firstly, the grounds do not identify a legal point but Judge Gibb went on to say that because the Appellant was unrepresented he had carefully read the judge's decision

and he said that the issues justify closer examination as to whether or not there may be a legal error. It was said at paragraph 4 in part as follows after saying that the case law established:

“... that a removal decision that prevented a parent pursuing family proceedings to establish contact with a child may breach Article 8 and that a period of discretionary leave may be required for the proceedings to conclude. Although the judge in the current case had dealt thoroughly with the standard issues as to family and private life there was only the briefest reference in paragraph 36 to the Appellant visiting his son in future, after removal, in the event he obtained legal access. In **MS** it was accepted that family proceedings could not effectively be pursued post-removal. Here it is arguable that the judge’s decision that it could be is unreasoned and not evidence-based. At 30 to 31 the judge makes adverse findings as to the Appellant’s commitment to his son but the last sentence of [31] and the comment at [36] suggest that he did accept that family proceedings had been initiated. The nature of the underlying findings require further examination but it arguably cannot be said that the family proceedings were dismissed entirely as non-existent or bogus.”

3. In his grounds of appeal the Appellant said that firstly, he had come to the UK to study, secondly, that he has established court proceedings to see his son and that he has “sole responsibility to look after my boy” and finally that the decision was in breach of Article 8 as he was restricted to complete his final year at university, which he struggled to pay for.
4. Before me today, after I had carefully explained the procedure to the Appellant, I invited him to make his submissions. He said that he had told Judge Jones that he had initiated court proceedings to have contact with his son. He had made efforts through HMRC to find out the location of mother and son and that he was committed to his son and he said he had more documents now and he wanted me to take them into account. For example, there was proof from the “mayor” and the “mayor’s office”. He said he wanted an adjournment today or he wanted me to grant him discretionary leave because there was a family court hearing on 11th June. He said before that he had needed to complete his final exams at university but that he has now completed his degree. He said he had some documents and although he knew he should have provided copies he had not made copies for the Home Office or for the Tribunal. He said he had set up two companies, one was ECO-Africa Limited and the other was Innovation for Africa Limited. He said he knew he did not have permission to work but said he had set them up anyway. It seemed curious to me that despite knowing he has no permission to work that the Appellant has set up these companies.
5. As for whether or not he knew he should not be showing me or indeed the Home Office the Family Court documents without permission from that family court he said he knew that that was so, but that he was showing them anyway because it had to do with his human rights. He then said that he did not know whether or not he should or should not have shown me the documents and he said he would be grateful if he could have his private life here in the UK. He wants to be an effective person. He has friends here as well. He said there were mistakes made by the Home Office in their decision. He said he had last seen his son some two years ago.

6. Mr McVeety in his submissions said that there was an error in the grant of permission to appeal. Permission to appeal should not have been granted. The case law makes clear that there has to be something genuine in relation to the application which has been made in terms of the genuine relationship. Here the judge at paragraphs 30 and 31 clearly found that there was no genuineness in terms of the commitment to the son and that the judge was entitled to make that finding and said that I should dismiss the appeal.
7. In reply the Appellant said that he was going to get the opportunity on 11th June to pursue his family case. He would not be able to do that if he was removed. He said letters from the Home Office showed that they had made different errors, his immigration history for example showed him being a Tier 4 Student, but those were errors. He was genuinely seeking to see his son and he should be permitted to do that.
8. In my judgment, the judge made clear in his decision, for example at paragraph 33, “the Appellant does not, I find, have a genuine and subsisting parental relationship with his son.” The judge also noted that the Appellant accepts that he has not seen his son since February 2015. The judge concluded that the Appellant was not committed to the objective.
9. The issues which were raised in this case included the Appellant suggesting that he should be allowed to remain in the UK to complete his private life such as completing his degree and from what I understand from the Appellant he has done that, he has completed all of the exams. The batch of correspondence to and from Rebecca Long-Bailey, the Member of Parliament, in reality showed nothing more than continued correspondence between Mr [O] and the Member of Parliament seeking to make representations and chasing whether or not a decision had yet to be made by the Home Office with some reference to the other proceedings in the Family Court at Truro. So those documents do not assist me with the error of law aspect of the case before me today.
10. The Family Court documents comprise orders made by the Justices of the Peace, DNA documentation and the application for a Child Arrangements Order. There is also an order which had been made at the previous hearing in March 2018. There is now to be a further family court hearing at Truro on 11th June 2018. None of those documents assist me with the error of law hearing in relation to whether or not there is a genuine and subsisting parental relationship between the Appellant and his son, and that is the focus of this appeal. I take into account a statement which the Appellant has signed and handwritten today, 29th May, within which he refers to having his name on the birth certificate as the child’s father and that he has sought to have, as he puts it, access to his boy and that he is confident that he will be able to re-establish contact to see his son.
11. But those are not the issues before me. I have to consider whether or not the decision already made by Judge Jones shows a material error of law and, as I have explained to the Appellant at the start and during these proceedings, the submission of new

evidence is rarely admissible, save unless there is an error of fact for the purposes of **E & R v Secretary of State**. I have to look to the determination of Judge Jones and read it as a whole and I ask myself this question: was there any possibility of the First-tier Tribunal Judge having materially erred in law when he came to the conclusion that there was no genuine and subsisting parental relationship between the Appellant and his son? In my judgment, reading the decision as a whole, the judge did take into account the extensive background and documentation which had been presented and filed by the Appellant. For example, at paragraph 22 the judge noted that the Appellant had said that his former partner and the child were living together in Cornwall and that there were the efforts to re-establish contact, that there was mediation, that court proceedings had been initiated, that the Appellant was unable to fund legal representation because his own father was unable to give him any further funds.

12. The judge took into account the various documents presented including a copy of the completed application under Section 8 of the Children Act 1989 for a Child Arrangements Order. There was also a copy of the birth certificate and a change of name deed. There was also consideration of an email from the Appellant's father. In the end, however, the judge came to the decision that he did and concluded that there was no genuine and subsisting relationship. There was no sufficient evidence of commitment from the father to the son. The judge was not persuaded that there was. That is the real issue in this case in my judgment. The Judge took into account the evidence, including the extensive documentation. The Appellant incorrectly asked me to grant discretionary leave. It is not for me to do so.

13. I have considered the case law, including the decision in **RS (India)** [2012] UKUT 00218 (IAC). That was a hearing in which Lord Justice McFarlane had sat at the Tribunal. The headnote says in part as follows:

1. Where a claimant appeals against a decision to deport or remove and there are outstanding family proceedings relating to a child of the claimant, the judge of the Immigration and Asylum Chamber should first consider:

i) Is the outcome of the contemplated family proceedings likely to be material to the immigration decision?

ii) Are there compelling public interest reasons to exclude the claimant from the United Kingdom irrespective of the outcome of the family proceedings or the best interest of the child?

iii) In the case of contact proceedings initiated by an appellant in an immigration appeal, is there any reason to believe that the family proceedings have been instituted to delay or frustrate removal and not to promote the child's welfare?

14. In this case the Judge had clearly concluded that there was a lack of commitment from the Appellant to his son. The Judge was entitled to come to that conclusion. There is no error of law in respect of that finding. The reasoning for that conclusion was sound. Neither the new documents now presented or indeed anything in the older documents (or indeed the submissions of the Appellant) change that. The best interests of the child were taken into account. As is made clear

in **Mohammed (family court proceedings-outcome)** [2014] UKUT 00419 (IAC), it is not sufficient for an appeal to be allowed at the Tribunal merely because a family court Child Arrangements Order is being pursued. As the judicial headnote of that case makes clear:

Whilst it may be that in the Family Court jurisdiction prior to the coming into force on 22 April 2014 of the Children and Families Act 2014 there was always the possibility of a parent making a fresh application relating to contact, there is nothing in the guidance given in RS (Immigration and Family Court) India [2012] UKUT 00218 (IAC) (which was approved by the Court of Appeal in Mohan v Secretary of State for the Home Department [2012] EWCA Civ 1363) that supports the notion that the mere possibility of such an application being made (or pursued) is a relevant criterion in the case of an immigration appeal when deciding whether to adjourn an appeal or to direct a grant of discretionary leave in order for such proceedings to be pursued. The guidance is concerned with whether there is a realistic prospect of the Family Court making a decision that will have a material impact on the relationship between a child and the parent facing immigration measures such as deportation.

15. In my judgment, it is quite clear that there is no material error of law in the decision of the First-tier Tribunal. I have considered the Supreme Court's decision in **Makhlouf v Secretary of State for the Home Department** [2016] UKSC 59. It is of course vital to consider the child's best interests and dual ethnicity aspects, but there has been nowhere near the kind of commitment and family life which could possibly have enabled the Appellant to have succeeded in his appeal before Judge Jones. In the circumstances I conclude that the decision of the First-tier Tribunal Judge stands. The Appellant assured me he will bring my decision to the attention of the family court. I trust he will do so.

Notice of Decision

Appeal of First-tier Tribunal Judge Jones does not contain an error of law

The Appellant's appeal is dismissed.

No anonymity direction is made.

Signed: Abid Mahmood

Dated: 29 May 2018

Deputy Upper Tribunal Judge Mahmood