Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/17347/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14th December 2017	**On 16th January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

NADEEM [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Vidal of Counsel instructed by Haris Ali Solicitors
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Telford made following a hearing at Harmondsworth on 31st March 2017.

Background

2. The appellant is a citizen of Pakistan. He entered the UK on 30th June 2008 and claimed asylum. He was refused and became appeal rights exhausted on 17th February 2009.

3. His former wife came to the UK with him but only lived with him for a very short period of time. She removed herself from the appellant with the children and when he followed her to her new home she chose to move again to avoid him and did not tell him where she lived. Relatively recently, the appellant made contact with her and the four children, who were born in 2005, 2006, 2007 and 2008. He sought and obtained a contact order on 11th December 2015 allowing him unsupervised contact from 15th January 2016 on Fridays from 5 till 9, and on Saturdays from 10 till 5.

4. On 11th March 2016 the appellant applied for leave to remain in the UK under the ten year parent route on the basis of his family and private life in the UK, on health grounds and outside the Rules on the basis of exceptional circumstances. He was refused on 4th July 2016 and it was this refusal which was the subject of the appeal before the Immigration Judge.

5. The judge formed a very negative view of the appellant. He found him to be an incredible witness overall and did not accept his word that he was either now or in the future willing, able or capable of exercising contact rights with the children.

6. He wrote:

> "I find that the order as made is one in which the court has been willing to test the water so to speak when a father turns up out of the blue as the appellant has done but it is by no means something settled in stone".

The judge concluded that it was no coincidence that the appellant had made his application only in the last few months after making contact with the mother of the children. In his view he could have contacted them much earlier had he been interested in their welfare, he could have been in touch through his brother.

7. The judge concluded:

> "The best interests of the children are frankly not served by him being in the UK in order for him to simply have contact or access which is allowed under the Family Court order. The actual practice here is as I find it not one of real benefit to the children".

8. The judge observed that the appellant had little knowledge of the children's daily lives and their schooling. He assessed the evidence with which he had been provided, namely photographs and letters, and took into account the very poor record that the appellant had with his family. There was no merit in the appellant's claim that he ought to be allowed to remain in the UK on medical grounds. He dismissed the appeal.

The Grounds of Application

9. The appellant sought permission to appeal on the ground that the judge had failed to place any weight on the evidence from the children that they were overjoyed to have their father back in their lives. He had acted against the principles of family law which makes no criticism of periods of non-contact between an absent parent and his/her children, and had failed to consider that in granting a final order for the father to spend regular unsupervised time with his children the Family Court had carried out safeguarding checks and deemed the father to pose no threat to their welfare. In essence, the judge had indicated highly subjective opinions which raised issues as to his impartiality and had failed to properly assess the positive evidence from the children and the impact upon them if the appellant were required to leave the UK.

10. Permission to appeal was initially refused but granted, upon renewal, by Upper Tribunal Judge Finch on 9th October 2017.

Submissions

11. Ms Vidal relied on her grounds and submitted that the judge had erred in failing to separate his adverse feelings for the appellant from the evidence which was actually before him. There was substantial evidence from the children, both from the letters and the numerous photographs, that they were delighted to have their father back in their lives and looking forward to a future in which he might play a part. The eldest child in particular, as could be seen from his demeanour in the photographs, was particularly attached to his father. Furthermore, the judge had erred in his approach to the order of the Family Court failing to realise that a great deal of work would have been done before the court would have agreed to such regular unsupervised contact.

12. Mr Duffy defended the determination and submitted that simply because the appellant had obtained a contact order did not mean that he intended to take an effective role in his children's lives. It was open to the judge to conclude that he did not, on the evidence before him, and the grounds amounted to a mere disagreement with the decision.

Findings and Conclusions

13. E-LTRPT.2.4 states:

    (a) The applicant must provide evidence that they have either –

        (i) sole parental responsibility for the child (or that the child normally lives with them); or

        (ii) access rights to the child; and

(b) the applicant must provide evidence that they are taking, and intend to continue to take, an active role in the child's upbringing.

14. It is quite clear that the appellant obtained a court order granting him access to the children and the judge was wrong to surmise that it had been made because the court was willing "to test the water" and not as a consequence of having undertaken proper investigation as to whether contact would be in the best interests of the children. To that extent, the grounds are arguable.

15. The judge also rendered his decision vulnerable to appeal by the use of intemperate language, thereby appearing to display an antipathy to the appellant which might cast doubt upon his impartiality.

16. Having said that, the judge reached conclusions which were open to him on the evidence.

17. This is an appellant who made no effort to have contact with his children for some six years after he separated from their mother, having apparently been violent towards her. He obtained the contact order very shortly before making this present application. Moreover, at the hearing, he appeared to know little about the children's lives, in particular, their schooling.

18. The judge took into account all of the evidence, including the photographs provided by the appellant of him with the children, and was entitled to observe that they all appear to have been taken recently in a fairly short space of time. He also considered the letters, which are certainly supportive of their father. However, in essence, the complaint in the grounds is about the weight which the judge attached to them. The judge weighed up the evidence in favour of the appellant, but was entitled to conclude that more weight ought to be attached to the appellant's past behaviour when considering whether he intended to continue to take an active role in his children's upbringing.

Notice of Decision

19. The original judge did not err in law. His decision stands. The appellant's appeal is dismissed.

No anonymity direction is made

Deborah Taylor

Signed Date 13 January 2018

Deputy Upper Tribunal Judge Taylor