Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/01338/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12th December 2018	**On 15th January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MILAD [A]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Sarker, Counsel
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

The Appellant is a national of Bangladesh whose appeal was dismissed by First-tier Tribunal Judge Lawrence in a decision promulgated on 2nd October 2018. The judge found that it was not disproportionate to refuse leave to the Appellant because there was no evidence that he was actively involved in his child's ([T]) upbringing. Grounds of application were lodged which essentially

submitted that the judge had failed to consider much of the evidence and what he had considered was not done appropriately. It was accepted that the Appellant did not meet the Immigration Rules but it was clear that he had an active and continuing role in the child's development and the judge had not taken into account the evidence of the probation officer and the terms of the Cafcass report. In particular, that report said that the child, [T], was very comfortable with her father and affectionate towards him and the judge had not taken that into account. Permission to appeal was granted by First-tier Tribunal Judge Robertson in a decision dated 25th October 2018.

A Rule 24 notice was lodged by the Home Office, stating that the lengthy Grounds of Appeal were nothing more than a disagreement with the First-tier Tribunal decision. The judge had properly addressed the question of whether the Appellant did play a significant role in the child's life and concluded that the Appellant did not.

Before me, Mr Sarker relied on his grounds. The judge had adopted a fragmented approach to the evidence. I was asked to set the decision aside and remit it to the First-tier Tribunal. For the Home Office, Mr Walker relied on the terms of the Rule 24 notice. The judge had said there was no evidence of contact continuing and the decision was reasoned and should be upheld.

I reserved my decision.

Conclusions

What is troubling in in this case is what the judge sets out in paragraph 24. The judge says that the fact that the Appellant is the biological father is insufficient. There has to be "more". Evidence of the "more" was lacking. He went on to say that the Appellant could maintain contact with his 7-year-old child by other means and there was no evidence that the Appellant was actively involved in [T]'s upbringing (paragraph 30).

The important point in the grounds is that the judge failed to consider the Cafcass report of 7th July 2016. This narrates, as said above, that the child was very comfortable with her father and affectionate towards him. They enjoyed their time together. The relationship was likely to be ongoing and lifelong and the Appellant was keen on building his relationship with his daughter because he loved her; indeed, he brought gifts for her, and he did have future plans. As the grounds say, the report when taken in the round evidences the parental affection and the role between the Appellant and his daughter and the fact that in going forward it would be in his daughter's best interests to continue that contact. This is a matter the judge did not consider.

What the Appellant was entitled to in this case was clear and proper factual findings by the judge on which he could base his Article 8 case. In essence, it seems to me likely that the Appellant had a stronger relationship with his daughter than found by the judge. That being so, the decision is not safe and while it cannot be said that the Appellant has a strong case, neither can it be

said that it is hopeless and he is entitled to have his decision based on clear factual findings which unfortunately are not in existence in this decision.

It therefore seems to me that the Appellant has not had a fair hearing because the judge did not consider all the documentation which was before him and which may well have had a significant bearing on the outcome of the appeal. Unfortunately, it seems to me that further fact-finding is necessary and this matter will have to be heard again by the First-tier Tribunal.

The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the appeal to the First-tier Tribunal.

There is no need for an anonymity order.

Signed *JG Macdonald* Date 3rd January 2019

Deputy Upper Tribunal Judge J G Macdonald