



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

Appeal Number: HU/17982/2018

THE IMMIGRATION ACTS

**Heard At: Manchester Civil Justice
Centre
On: 21st May 2019**

**Decision and Reasons
Promulgated
On 05 July 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**WKT
(anonymity direction made)**

Appellant

And

The Secretary of State for the Home Department

Respondent

**For the Appellant: Mr Hussain, Equity Law Chambers
For the Respondent: Mr McVeety, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The Appellant is a national of Pakistan born in 1973. He appeals with permission the decision of the First-tier Tribunal (Judge Andrew Davies) to dismiss his human rights appeal.
2. The matter at the heart of the appeal before the First-tier Tribunal was whether the Appellant has a genuine and subsisting parental relationship with his three British children. If he did then the appeal fell to be

determined in accordance with the principle set out at s117B(6) of the Nationality, Immigration and Asylum Act 2002.

3. The First-tier Tribunal found that it could not be satisfied that the Appellant did in fact play any active parental role in the upbringing of his children, who were living permanently with their mother. As a result the appeal was dismissed.
4. Permission was granted on the 19th March 2019 by First-tier Tribunal Judge Kelly who considered it arguable that the Tribunal's conclusion was contrary to the evidence and to jurisprudence including JG (s117B(6) 'reasonable to leave' United Kingdom) Turkey [2019] UKUT 00072 (IAC).
5. By his letter dated the 16th April 2019 the Secretary of State conceded that the decision of the First-tier Tribunal is flawed for material error of law. Before me Mr McVeety withdrew that letter, explaining with apologies that it had been sent in error. Although I offered to put the matter back, Mr Hussain was very helpfully content to proceed directly to make submissions on whether the decision of the First-tier Tribunal should be set aside
6. I heard submissions from both parties and I reserved my decision which I now give.
7. Mr Hussain squarely based his appeal on a single ground: that the First-tier Tribunal decision was flawed for a lack of reasoned findings on the material evidence.
8. The positive evidence of the Appellant's involvement in his children's lives consisted of the following material:
 - (i) The evidence of the Appellant himself;
 - (ii) A letter from the mother of the children dated 18th November 2018 in which she states that the Appellant looks after the children on weekends and that he also picks them up from school, particularly when she is unable to do so because she is caring for her disabled daughter. She states that they have not gone a single day without seeing their father;
 - (iii) An undated letter from the mother of the children in which she stated that the Appellant has contact with the children and that they speak to him every evening on the telephone. She writes that the children have a strong bond with their dad and asks that he be allowed to stay in the United Kingdom;
 - (iv) A letter dated the 14th November 2018 from a support worker at the children's primary school which confirmed that the Appellant has "on occasion" collected the children from, or brought the children to, school. The letter states that no contact details are held for him;

(v) A letter dated 14th January 2019 from the headteacher of the same school adds that on the 30th November 2018 the Appellant registered his name and contact details as 'next of kin' with the school.

9. Of this evidence the First-tier Tribunal found as follows. The Appellant's own evidence consisted of four sentences in a witness statement which revealed little about his relationship with them. He gave no detail and no explanation as to what role he might play in making decisions in their lives. His oral evidence that he collected the children three times per week was to be contrasted with the evidence from the school that he had done so "on occasion". The Tribunal further considered it relevant to note that up until the issue arose in the context of this appeal, the Appellant had not considered it necessary to ensure that he was listed as an emergency contact with the school. In oral evidence the Appellant could not name the teachers or the head at the school. The fact that the school had confirmed that the details had now been given took the matter little further.

10. The most important evidence in the appeal came from the mother of the children. Again, her claim that the Appellant took an active role in for instance getting the children to and from school appeared to contradict the evidence of the school itself. It was also significant that this witness was not called to give oral evidence. That was because in December 2016 she had written to the Respondent to say that she and the children were forced to flee domestic violence at the hands of the Appellant and that since January of that year he had had no contact with the children at all. She said that she had suffered domestic violence since 2011 but had only dropped criminal charges against the Appellant at the instigation of her mother who was concerned about family 'honour'. The gist of her long and detailed letter is summed up in this line: "he only used my children to get the visa". Of this witness' evidence the Tribunal concluded:

"It is the contrast between the two letters that made it highly desirable that the Appellant's ex-wife was called to give oral evidence. Without the opportunity to have that evidence tested in cross-examination I am not satisfied that I can put any weight on her letter and the inconsistency with the evidence from school only strengthens my concern...."

11. Having considered all of that evidence the Tribunal concluded, at paragraph 25, that the Appellant had failed to demonstrate that he was playing a genuinely parental role.

12. It is perhaps evident from my rehearsal of the First-tier Tribunal's findings that I am unable to accept that this was a determination flawed for a lack of reasons. The Tribunal gave reasons for placing limited weight on the evidence of the Appellant himself: it was scant, contained no detail and was contradicted by other evidence. Upon the supportive letters from his ex-wife the Tribunal placed little weight because she had not appeared to speak to the fundamental contradictions in her evidence. That left the letters from the school which said no more than the Appellant had "on

occasion" brought his children or collected them. He was unable to name his children's teachers and until it was raised as an omission the school did not even have him on record as next of kin. The Tribunal concluded that this evidence was insufficient to demonstrate a genuine parental relationship. As Mr McVeety pointed out, weight is a matter for the Tribunal. In the absence of perversity I am unable to interfere with the conclusions it reached. Nothing in the caselaw cited in the grounds of appeal could have compelled the First-tier Tribunal to reach a different decision. For that reason I must uphold its decision.

Anonymity

13. The Appellant's case relates to his children. I am concerned that identification of the Appellant could lead to the identification of the children involved, contrary to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in accordance with Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

"Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

14. The decision of the First-tier Tribunal does not contain an error of law and it is upheld.
15. There is an order for anonymity.



Upper Tribunal Judge Bruce
Dated 22nd May

2019