



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

Appeal Number: HU/26930/2016

THE IMMIGRATION ACTS

Heard at Birmingham CJC

On 6 March 2019

**Decision & Reasons
Promulgated
On 25 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**BEN [D]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Sangera, counsel instructed by JM Wilson Solicitors
For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Ghana born on 6 December 1977. He claimed to have entered the UK in 1996 and thereafter overstayed. On 30 May 2013 he applied for leave to remain on the basis of his private and family life in the UK. This application was refused. He made a further human rights claim in November 2014 which was refused and further submissions which were accepted as a fresh claim on 26 August 2016. This application was refused in a decision dated 29 November 2016. The appellant appealed in time, however his appeal did not come before the

First-tier Tribunal for hearing until 15 March 2018. The appellant was unrepresented at that hearing.

2. In a Decision and Reasons promulgated on 3 April 2018 First-tier Tribunal Judge Watson dismissed the appeal. Permission to appeal was sought in time to the Upper Tribunal on a number of bases, but in particular on the basis that there were ongoing care proceedings in relation to the appellant's children. The judge had failed to take into account the most up-to-date evidence in relation to those proceedings, viz an e-mail sent to the Tribunal on 12 March 2018.
3. Permission to appeal was granted in a Decision by First-tier Tribunal Judge Parker dated 9 May 2018 in respect of a further point which was that at [21] the judge appeared to be under the misapprehension that the appellant had only one child, whereas in fact there is more than one child. The Secretary of State lodged a Rule 24 response dated 10 July 2018 opposing the appeal, albeit without sight of the file.

Hearing

4. On behalf of the appellant, Ms Sangera noted that permission to appeal had been granted on limited grounds and that she would focus on [6] and [9] of the grounds of appeal. In particular, the failure to consider the contents of the e-mail at [18] and the failure to refer to the appellant's children, but only one child at [21].
5. A copy of the e-mail was produced which states that contact by the appellant with his children has been arranged twice monthly since 22 November 2017 and that child B has not attended contact since November 2017 and does not show any interest in attending contact with the appellant. However, the two younger children are made available for contact as agreed.
6. Whilst there was no witness statement from the appellant, Ms Sangera submitted that her instructions were that he has been having contact with the two younger children. Having checked the judge's Record of Proceedings this is not reflected in the judge's findings at [19] and [21]. There is no consideration of the children's best interests, nor the judgment in *Razgar* [2004] UKHL 37.
7. In her submissions, Ms Aboni stated that the judge had directed himself appropriately and had made findings open to him on the evidence. The appellant's evidence is recorded at [19]. Contact was once a fortnight with the younger children, however this was very short as the mother brought them late or not at all. If that was the case then the appellant could not have seen them every fortnight and it was open to the judge to find the appellant had limited contact with his children since November 2017. The appellant had not given evidence as to his input into decisions with regard to their upbringing in the future. She submitted the appellant's case was purely self-serving. There was no error in the judge's

conclusions regarding the role he played in their upbringing. The judge had adequately considered Section 55 and the children's best interests, and it was open to the judge to find that the appellant had not shown he is a regular father figure and whether the relationship could be maintained if he was not required to leave the UK. Ms Aboni submitted that contact could still be facilitated from abroad and the judge found at [22] that the welfare of the children would not be seriously harmed by his removal. She submitted there was no error in the judge's decision.

8. In reply Ms Sangera submitted there was clearly evidence in terms of the contact proceedings that the appellant is involved, albeit this is limited by the terms of the care order. She submitted it would be wrong to draw adverse inferences from that, particularly given the nature of his relationship with the children's mother, which is poor since they are estranged, and it was not the appellant's choice to have limited contact.
9. I reserved my decision which I now give with my reasons.

Findings and Reasons

10. It is clear that the decision of First tier Tribunal Judge Watson contains factual errors: at [21] the Judge made reference to "the child" when in fact the Appellant has three children and is in contact with the younger two. Whilst this could conceivably be simply a typing error, the rest of the sentence is illustrative in that the Judge held: "*seeing the child on only 2 occasions in the past two years and sporadically before that does not constitute taking an active role in the child's upbringing.*" There is reference in [20] by the Judge to a letter from the local authority dated 21.11.16. However, email correspondence between the Appellant's solicitors and the Local Authority dated 12 March 2018 and sent to the Tribunal on 14 March 2018 by both post and fax, confirmed that the terms of the current contact order was for the Appellant to see his two younger children twice monthly since 22 February 2017, which clearly postdates the evidence relied upon by the Judge.
11. There was thus evidence of ongoing fortnightly contact between the Appellant and two of his children, which was not considered by the Judge. In these circumstances I find that First tier Tribunal Judge Watson erred materially in law, as this evidence was clearly supportive of the Appellant's contact with his children and thus materially impacted on the outcome of the appeal.
12. I remit the appeal for a hearing *do novo* before the First tier Tribunal. I make the following directions:
 - (i) A witness statement from the Appellant should be provided, attesting as to contact with his children and the nature of that contact;

- (ii) An update from the Local Authority should be obtained as to the current Care Order and the level of contact between the Appellant and his children;
- (iii) The evidence set out above should be served on the First tier Tribunal and the Home Office 5 working days before the re-listed appeal hearing.

Notice of Decision

The appeal is allowed to the extent that it is remitted back to the First tier Tribunal for a hearing *de novo*.

No anonymity direction is made.

Signed Rebecca Chapman

Date: 20.3.19

Deputy Upper Tribunal Judge Chapman