



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: HU/02176/2019  
(V)**

**THE IMMIGRATION ACTS**

**Heard remotely from Field House  
On 15 March 2021  
Extempore**

**Decision & Reasons Promulgated  
On 26 March 2021**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**SHAH MUBIN AHMED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M A Rana, Counsel, instructed by Blakewells Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Malcolm (“the judge”), promulgated on 30 September 2019, by which he dismissed the Appellant’s appeal against the Respondent’s refusal of his human rights claim. That claim was made on 12 June 2018 and relied on the assertion that the Appellant had

established both private and family life in the United Kingdom since his arrival here in 2010.

2. The real focus of the claim was that the Appellant enjoyed family life with his daughter, born in August 2014, with whom he had a genuine and subsisting parental relationship, notwithstanding the fact that he and his daughter's mother were no longer in a subsisting relationship. The Appellant had stated that he was having regular contact with his daughter, including residential contact at weekends and during school holidays. The Respondent concluded that there was minimal contact, if any, and that the Appellant had failed to show that he had either "sole responsibility" or "parental responsibility" for his daughter. The private life aspect of the Article 8 claim related to the time spent in this country.

### **Error of law decision**

3. I can state my decision on the error of law issue relatively briefly in light of Ms Everett's concession that the judge has materially erred in law. She has in my view quite properly, accepted that there is a material contradiction between two important parts of the judge's decision.
4. At [65] the judge said as follows:

"I accept that the Appellant has had contact with his daughter over the years and more recently has had contact including residential contact as agreed with Ms Begum with arrangements being made between the Appellant and Ms Begum's father".
5. The arrangements referred to are set out earlier in the decision and essentially were that the Appellant would see his daughter on one day during the week and that she would stay over with him (at his sister's house, with whom he lived) at weekends and for a proportion of school holidays. These arrangements were informal in nature.
6. At [88] the judge went on to state as follows:

"Whilst I accept that the Appellant does have contact with his daughter as set out above, I am not entirely satisfied on the evidence given by the Appellant as [to] the extent of the contact which he has with his daughter given the concerns which had previously been raised in respect of the Appellant's credibility at his asylum hearing and given what I consider to be wilful incorrect information given in his application as to whether he had ever had an asylum claim refused".
7. In the next paragraph the judge stated:

"Accordingly, given the concerns which I have raised about the credibility of the Appellant whilst I accept that he does have contact with his daughter I am not satisfied that the level of contact is as claimed by the Appellant".

8. As recognised by Ms Everett, it would in principle have been possible for the judge to have accepted a degree of contact between the Appellant and his daughter, but not to the extent asserted. The difficulty with the decision is that at [65] the judge stated in terms that he had accepted the nature of the contact as agreed with the daughter's mother. As explained previously, those arrangements included regular and fairly significant residential contact. Thus, the position adopted in [88] and [89] gave rise to a genuine contradiction in the judge's findings and analysis on the crucial issue of contact. There is no clear finding as to what other form of contact the Appellant might have been having with his daughter if it were not in line with the arrangements agreed with Ms Begum.
9. Given the importance of the issue of contact to the overall assessment of the daughter's best interests and the Article 8 claim overall, the contradiction amounts to an error and that error is I conclude, and as accepted by Ms Everett, material to the outcome.
10. The second point relates to the judge's purported alternative conclusion as stated in [89]:

"In any event even if I was satisfied that the Appellant was exercising contact as described by him in his evidence whilst I accept that if the Appellant requires to leave the UK he would no longer be able to have this contact with his daughter I consider that he would be able to continue to maintain contact by telephone and video call".
11. Ms Everett acknowledged the difficulties with this analysis. If indeed the judge was accepting the full extent of the contact claimed by the Appellant, there was insufficient evaluation and reasoning as regards the conclusion that a switch from regular and fairly significant face-to-face contact to entirely remote contact would in all the circumstances be proportionate. It rather seems to me, and with all due respect, that this alternative conclusion was put down as something of an afterthought. In any event, in the circumstances of this case it was legally inadequate. This is a further material error of law in the judge's decision.
12. On the basis of Ms Everett's concession and for the reasons set out above, the judge's decision must be set aside.

### **Disposal**

13. I have concluded that remittal is, on an exceptional basis, the appropriate course of action. I say this for two reasons. First, the passage of time. There has been a significant period between the hearing before the judge and now. Second, there is important fact-finding to be undertaken. The judge did clearly have concerns in respect of the Appellant's overall credibility. The fact that the judge created a contradiction in his findings does not preclude those credibility concerns from remaining a relevant factor as regards the assessment of the precise level of contact between the Appellant and his daughter. In addition, the nature of the contact does

potentially go to the existence or otherwise of a genuine and subsisting parental relationship between the Appellant and his daughter. It may well be that the First-tier Tribunal on remittal finds there is such a relationship, however in my view it would be artificial for me to preserve the judge's finding on this particular issue. It is best if the First-tier Tribunal comes to this case with a clean slate, as it were.

14. Therefore, there are no preserved findings of fact.

### **Notice of 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 of the First-tier Tribunal.**

**I remit the case to the First-tier Tribunal.**

**No anonymity direction is made.**

### **Directions to the First-tier Tribunal**

- 1) This appeal is remitted to the First-tier Tribunal (Hatton Cross hearing centre), with no preserved findings of fact;
- 2) The remitted hearing shall not be conducted by First-tier Tribunal Judge Malcolm;
- 3) Whether the remitted hearing shall be conducted remotely or on a face-to-face basis is a matter for the First-tier Tribunal.

Signed H. Norton-Taylor

Date: 18 March 2021

Upper Tribunal Judge Norton-Taylor