



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: HU/04805/2020**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9<sup>th</sup> November 2021**

**Decision & Reasons Promulgated  
On 19<sup>th</sup> November 2021**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**NAWSHAD LOUDIN  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Dhanji, of Counsel, instructed by Bijana & Co  
Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Afghanistan born on 9<sup>th</sup> April 1990. He arrived in the UK in 2006 and claimed asylum. His claim was refused and his appeal dismissed in 2007. He made a further asylum claim in 2009, but again it was refused and he became appeal rights exhausted in November 2010. In June 2011 he was detained and removed to Kabul,

Afghanistan. He left Afghanistan and went to Belgium where he claimed asylum in January 2012. He left Belgium and entered the UK illegally, and claimed asylum again, but was removed back to Belgium in May 2012. He re-entered the UK, was encountered in January 2013 and removed back to Belgium in April 2013. He returned to the UK in 2018 and made a human rights claim to remain. This application was refused in a decision dated 16<sup>th</sup> March 2020. His appeal against the decision refusing his human rights claim was dismissed by First-tier Tribunal Judge Lucas in a determination promulgated on the 11<sup>th</sup> April 2021.

2. Permission to appeal was granted on 21<sup>st</sup> May 2021 by Judge of the First-tier Tribunal Gumsley on the basis that it was arguable that the First-tier judge had erred in law in failing to make findings of fact on key issues such as whether the appellant and sponsor were partners; the nature of the relationship between the appellant and his child and his step-child; the strength of his private life ties with the UK; and the credibility of the evidence. It was also found to be arguable that there was no consideration of the appeal under Article 8 ECHR outside of the Immigration Rules; and that there had been a failure to consider the best interests of the children as a primary consideration.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to decide whether any such error was material and whether the decision and findings should be set aside.

#### *Submissions – Error of Law*

4. In the grounds of appeal from Mr Dhanji it is argued for the appellant, in summary, as follows. It was argued before the First-tier Tribunal that the appellant met the requirements of Appendix FM at EX1 to remain as, it was argued, he was the partner of Ms Travers and there were insurmountable obstacles to family life with Ms Travers and the two children of the family, K and S, in Afghanistan. It is argued that the First-tier Tribunal failed to make findings on this argument as there needed to be findings as to whether they were partners, and whether the appellant had a genuine and subsisting parental relationship with K and S, and whether they could be expected to have family life in Afghanistan. There were observations by the First-tier Tribunal about the lack of independent evidence relating to family life and cohabitation but no findings on the oral evidence that was before the First-tier Tribunal and no clear decision as to whether family life was shown on the balance of probabilities. There was further no consideration of the best interest of the children of the family, K and S, and a failure to apply s.117B(6) of the Nationality, Immigration and Asylum Act 2002.
5. Further there was also a failure by the First-tier Tribunal to give reasons why the appellant would not have very significant obstacles to integration if returned to Afghanistan at paragraph 42 of the decision, and thus a failure to properly reason the decision on the appeal with

reference to the private life Immigration Rules at paragraph 276ADE(1) (vi).

6. In a Rule 24 letter for the respondent from Mr T Lindsay it is accepted that the determination should be set aside as it contains no clear findings as whether family life exists between the appellant and the children, and no finding as to whether he has a genuine and subsisting parental relationship with the children. In light of these errors it is accepted for the respondent that the findings on the best interests and Article 8 ECHR are not sustainable.

### *Conclusions - Error of Law*

7. It was agreed by consent of both parties that the decision of the First-tier Tribunal errs in law, in failing to properly determine whether the appellant has a genuine and subsisting relationship with his partner and whether he has a genuine subsisting parental relationship with the two children, and thus in failing to determine the Article 8 ECHR appeal, particularly by reference to s.117B(6) of the Nationality, Immigration and Asylum Act 2002. I set aside the decision of the First-tier Tribunal and all of the findings.
8. It was then agreed that it was possible to continue the hearing and remake the appeal as there were only two potential factual issues that needed to be resolved: whether the appellant and his partner had a genuine and subsisting relationship with each other, and whether he has a genuine and subsisting parental relationship with the child they have together, K, and potentially with his step-child, S. The parties were given half an hour to consider the evidence before the First-tier Tribunal before the remaking hearing commenced which they agreed sufficed.

### *Evidence & Submissions - Remaking*

9. The appellant's evidence, in his written statement and oral evidence was, in summary, as follows. He started living with his partner Ms Joy Travers, in December 2017, and so they were definitely living together from January 2018. They live together in Dover with their sons: S who is Ms Travers son from a previous relationship who does not see his biological father, as his biological father does not want this, and who sees the appellant as his father, and K (born October 2017) who is their biological son together. He cannot show documentary evidence of his cohabitation because his name is not on any of the bills. He does not have permission to work, but is given some money by a friend who owns a shop. He thinks it is in the best interests of his two sons for him to remain in the UK with them as he loves and cares for them. He usually takes S to school by car, a journey of about two miles, and either he or Ms Travers picks him up. She cannot drive. She is on benefits and so they live on that money and some help from his friend who has a shop. He takes K to nursery (which is in the same place as the school): K attends three times a week full days on Monday and Friday (8.45 to 14.45) and a

half day on Wednesday (11.45 to 14.45). He is happy in nursery. S is okay in school, although he did have issues with bullying and still can get upset about skin colour issues, but now he has a friend called Evan who came to the house for a party recently. The appellant gets on well with Ms Travers parents: they have seen them a lot in the summer and about once a month or so in winter in their home in Aylesham. He is not currently in touch with his mother in Afghanistan, but she does know about the children. He could not take his family to Afghanistan because it would not be safe for them. He intends to work if he is given permission to remain.

10. Ms Joy Travers evidence from her written statements and oral evidence is in summary as follows. She met the appellant in August 2016 at a party at her sister's house. She started cohabiting with the appellant at Christmas 2017. The appellant has taken on a father role to both of the children even though S is not his biological child, he does not differentiate between them. The appellant has been very supportive because S has suffered bullying at school due to his skin colour. She believes it would be impossible for them to live with the appellant in Afghanistan because the security situation is so precarious, and with lack of electricity and internet it would make it impossible for her to maintain her relationship with the appellant from the UK. Her sons are both British citizens and should be entitled to live in the UK with both of their parents. Her evidence was that their son K attends nursery for the times given by the appellant, and that he mostly takes him in the mornings with the pick-ups shared but she said that they walk or take the bus, and occasionally might take the car but that walking was the normal way to get to school as it was about ten minutes away. She confirmed that there were still bullying issues for S, but that he did have two friends Evan and Bobby; and also that the appellant gets on with her parents and they see them mostly at their house. She did not think the appellant was currently in contact with his mother but she does not like to talk about Afghanistan with him as she does not want to upset him or want those horror stories in her head. She confirmed that a friend helps the appellant out financially, and sets out in her statement that she has worked as a hair dresser and will be looking again for work once K starts school.
11. At the end of the evidence Ms Everett submitted that although there was a discrepancy as to how the appellant took K to nursery, whether by car or walking, and the distance from the house that on balance in light of the other evidence she was satisfied that there was a genuine and subsisting parental relationship between the appellant and his son K, in light of his name being on the birth certificate. As a result she accepted that the appeal fell to be allowed under s.117B(6) of the Nationality, Immigration and Asylum Act 2002 as the public interest did not require the appellant's removal as it would not, in all of the circumstances, be reasonable to expect K to leave the UK.
12. Mr Dhanji confirmed that he was happy that the appeal be allowed on this factual basis and that it was not needed to make any further factual

findings as on the evidence of the parties they had not been cohabiting for two years at the date of application, and so the appellant could not fulfil the definition of partner as set out at GEN 1.2 of Appendix FM of the Immigration Rules and so could not succeed in an appeal by reference to the family life Immigration Rules.

### *Conclusion - Remaking*

13. I find that the appellant has a family life relationship with his partner, Ms Joy Travers, with whom I accept he has a genuine and subsisting relationship, and the two children of the family, S (his step-child with whom he has lived for almost three years) and K his biological child, based on the oral evidence before me and the birth certificate of K. I find that his removal would interfere with that family life.
14. When considering the proportionality of his removal I take note that the appellant speaks English as he gave evidence before me in English, so this is a neutral matter; and that he is not currently financially independent as he has no permission to work and his partner is reliant on benefits, and thus this is a matter which counts against him as it is in the economic interest of the UK that persons seeking to remain should be financially independent, although I also accept the evidence of the appellant that he will seek work once he is able to do so.
15. I find however that the removal of the appellant would constitute a disproportionate interference with his right to respect for family life because there is no public interest in his removal, applying s.117B(6) of the Nationality, Immigration and Asylum Act 2002, because he has a genuine and subsisting parental relationship with K, his biological child with Ms Travers, and it would not reasonable to expect K, a British citizen, to leave the UK and live with the appellant in Afghanistan in light of the current circumstances in that country.

### Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal and all of the findings.
3. I re-make of the decision in the appeal allowing it under Article 8 ECHR.

Signed: Fiona Lindsley  
Upper Tribunal Judge Lindsley

Date: 9<sup>th</sup> November 2021

