Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/00592/2020 (V)

THE IMMIGRATION ACTS

Heard at : Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On : 12 November 2021	**On: 26 November 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

USMAN NOOR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Heybroek, instructed by Alison Law Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Microsoft Teams. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his human rights claim.

3. The appellant is a citizen of Pakistan born on 27 March 1984. He arrived in the UK on 7 May 2011 on a student visa valid until 1 July 2012 which was extended until 12 November 2914 but then curtailed to expire on 12 September 2014. He claimed asylum on 21 December 2015, after being served with a notice of liability to removal as an overstayer, claiming to be a gay man in a same-sex relationship with Waleed Khan who was at risk of persecution in Pakistan on the basis of his sexuality. His claim was refused and his appeal against the refusal decision was dismissed, with the First-tier Tribunal rejecting his claim to be gay. The appellant made various other applications in 2017 and 2018 on the basis of his claimed same-sex relationship with Waleed Khan and continued to make submissions on the same basis up to and including September 2019, all of which were refused. On 7 October 2019, prior to the date set for his removal to Pakistan, the appellant made an application for a residence card under the EEA Regulations as a person with a derivative right of residence as the joint primary carer of a British child, the son of his claimed partner Lindsey Roberts. That was also refused. On 14 November 2019 the appellant was served with a notice of liability for removal and was detained and on 20 November 2019 he made further submissions in an application for leave to remain, again on the basis of his same-sex relationship. Those submissions were rejected under paragraph 353 of the immigration rules.

4. The appellant then made an application for leave to remain on the basis of his relationship with Ms Roberts on 4 December 2019. The application was voided, but the appellant made further submissions on 9 and 12 December 2019 which were rejected under paragraph 353 of the immigration rules. Following judicial review proceedings, the respondent agreed to reconsider the submissions and the appellant supplied further grounds and evidence on 26 and 29 June 2020. Those submissions were again refused, on 16 July 2020, but as a fresh human rights claim based upon his relationship with Ms Roberts and her children, which then gave rise to a right of appeal.

5. The appellant appealed that decision and his appeal came before First-tier Tribunal Judge Curtis on 18 March 2021. The judge had regard to the appellant’s exercise of deception in his pursuit of his previous claim and in his further submissions based upon his fabricated relationship with Waleed Khan, and also considered that he had lied in his EEA residence application in claiming to be a joint carer of Ms Roberts’ son. He considered that the appellant’s immigration history was important as it confirmed the extent of his dishonesty. As regards the appellant’s claimed relationship with Ms Roberts, the judge noted the absence of a DNA report for Zain, the appellant’s claimed biological child with Ms Roberts, and refused to accept the documentary evidence before him as determinative of paternity. The judge did not accept that the appellant and Ms Roberts were in a genuine and subsisting relationship and did not accept that the appellant was Zain’s father or that he had a genuine and subsisting relationship with Zain. He accordingly found that the requirements of Appendix FM were not met. The judge found further that the appellant had not met the requirements of paragraph 276ADE(1) on the basis of his private life and that the respondent’s decision was not disproportionate and that there was no breach of Article 8. The appeal was accordingly dismissed.

6. The appellant sought permission to appeal the decision to the Upper Tribunal on the following grounds: that the judge had erred by allowing his abhorrence at the appellant's past conduct and immigration history to infect his overall analysis as to whether he was the father of Zain and whether he was in a genuine and subsisting relationship with Ms Roberts and the children including Zain; and that the judge had, as a result, erred by disregarding documentary evidence and oral evidence which appeared to be in favour of the appellant.

7. Within the application for permission there was an application under Rule 15(1) and (2) of the Tribunal Procedures (Upper Tribunal) Rules 2008 for the admission of DNA evidence of the paternity of the appellant's son Zain.

8. Permission to appeal was granted by the First-tier Tribunal. The grant of permission referred to a number of documents which, on balance, pointed to the fact that the appellant was the father of Zain, and it was considered arguable that the judge had failed adequately to consider those documents in making his finding on the paternity issue and his overall findings on the genuineness of his relationship with Ms Roberts.

9. The matter came before me.

10. In light of the DNA evidence, Mr Diwnycz conceded that the appellant was the father of Zain and he was content for me to find an error of law on that basis, set aside the decision of Judge Curtis and remit the matter to the First-tier Tribunal for a complete rehearing. I was not content to set aside the First-tier Tribunal's decision on that basis, however, given that the DNA report was evidence not before the Tribunal and was therefore not relevant to the error of law matter before me. Nevertheless, in light of Mr Diwnycz's agreement that there were documents before the First-tier Tribunal which the judge appeared not to have taken into account and which were material to the question of Zain's paternity, such as the letter from Bernie Grimes of Salford NHS Trust dated 28 August 2020 referred to in the grant of permission, I concluded that Judge Curtis's decision could not be upheld and had to be set aside.

11. Both parties were content for a brief decision without lengthy reasoning, given Mr Diwnycz's concession. In the circumstances I need say nothing further, other than that the judge's findings and conclusions on the genuineness of the appellant's relationship with Ms Roberts were not sustainable as a result of a failure to consider all the evidence as a whole.

12. Accordingly the decision has to be set aside in its entirety. The appropriate course, as agreed by the parties, is for the matter to be remitted to the First-tier Tribunal for a *de novo* hearing with no findings preserved. It will then be open to the First-tier Tribunal, in considering the appeal afresh, to have regard to the DNA report at that point.

DECISION

13. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the

Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard before any judge aside from Judge Curtis.

Signed: S Kebede Dated: 15 November 2021

Upper Tribunal Judge Kebede