



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002091

First-tier Tribunal No: HU/01278/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 18 August 2023

Before

UPPER TRIBUNAL JUDGE KEITH

Between

SHEFKI DACI
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Sowerby, Counsel, instructed by Connaught Law
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 10th July 2023

DECISION AND REASONS

1. These written reasons reflect the oral decision and full reasons which I gave to the parties at the end of the hearing.
2. The appellant appeals against the decision of Judge Sullivan of the First-tier Tribunal, who in a decision promulgated on 19th April 2023, dismissed his appeal against two decisions: the respondent's decision of 13th January 2023 to refuse to revoke a deportation order made on 15th December 2011; and to refuse a human rights claim in a decision 9th August 2022. Despite the continuance of the deportation order, the appellant has repeatedly entered the UK on four occasions between August 2011 and August 2022.

The Judge's decision under challenge

3. In considering the respondent's decisions, the Judge considered the appellant's immigration history, including his arrival in the UK using a false document which resulted in a sentence of imprisonment; and his later removal, albeit in contested circumstances as to whether he was aware of a deportation order, to his country of origin, Albania, in 2011. The appellant claims that he was unaware of the deportation order and in essence left the country voluntarily. The respondent

maintained that the deportation order had been validly served, and the Judge found this to be the case, as to which there has been no appeal.

4. The further context of the appellant's immigration history is that the appellant previously unlawfully re-entered the UK in April 2014; applied for leave to remain as the spouse of his now wife, who herself at the time had limited leave to remain and he was granted leave to remain in October 2021 valid until 3rd May 2024, which the respondent says was in error and in circumstances where, as Mr Clarke points out, by virtue of Section 5(1) of the 1971 Act was effectively void, where there was an extant deportation order. Having been granted leave, the appellant and his family then left the UK for a family visit to Albania in December 2021 but upon re-entry the appellant alone was prevented from re-entering in January 2022. He then re-entered illegally, in any event, in August 2022.
5. There is no dispute or no ground that the Judge had considered and directed himself correctly to the law at §§14 to 17 of his decision, which I do not recite save to observe that he focused in part on issues which the appellant now says that they ought not, specifically R (RK) v SSHD (s.117B(6); "parental relationship") IJR [2016] UKUT 00031 (IAC); and the case of Ortega (remittal; bias; parental relationship) [2018] UKUT 00298 (IAC) on whether there was a genuine and subsisting parental relationship between the appellant and his wife's son. I put it in neutral terms because it is contested that there is a relationship of stepfather and stepson, albeit the respondent says that she had always accepted that there was a family relationship but not a parental one. I come on to discuss why, in Mr Sowerby's submission, he says that there was also, by implication, an acceptance of a parental relationship.
6. The judge noted at §20 of his decision that the respondent's representative was unable to explain why the appellant had been granted leave to remain in the UK and the Judge recorded in that paragraph: *"The Respondent's representative could not show that the Appellant had at any time prior to the 2022 Refusal been told that he had been granted leave to remain in error. I said that I would deal with this appeal on the basis that he had not been told"*.
7. In essence the appellant had not been told that the grant was in error. The Judge went on to consider the appellant's domestic arrangements. He was married to an Albanian national who, as indicated, has a son with a previous partner who is a non-resident father but in respect of whom the Judge found that there was an ongoing parental relationship. The appellant claimed to be a stepfather in respect of that child.
8. In respect of the child, there was in the Judge's view nothing to indicate that the biological father had surrendered or shared his parental responsibilities with the appellant. The Judge found at §29 that the deportation order had been served. The Judge concluded at §31 that whilst the appellant claimed to be at low risk of reoffending, he had continued to re-enter the UK unlawfully with no attempt to apply for entry clearance knowing, in the Judge's view, that he was the subject of a deportation order. In that context, the Judge regarded the seriousness of the appellant's disregard for immigration control as heightened. He also did not accept the appellant's claim to have entered the UK unwittingly in 2014 because he was drunk. He found him not to be an honest or reliable witness. At §36, he went on to analyse the appellant's claimed relationship with the stepson and concluded that the appellant had overstated his involvement in the arrangements for and care of his wife's son. The judge rejected the appellant's claim also that he did not know anyone in Albania and instead found that most of his family lived

there. The Judge considered the appellant's claimed family life as it was said there were no details of the appellant's private life, (see §42). The Judge said that he would deal with the appeal on the basis that the appellant's wife and her son would remain in the UK because she had had leave in the UK since December 2019. The Judge noted, at §44, which was the focus of this appeal, that the stepson was referred to as a British citizen but in the Judge's view he had not seen evidence of the son's passport or the biological father's nationality or immigration status. He therefore made no positive finding as to the stepson's nationality. The Judge accepted that the decisions under challenge would interfere with the appellant's right to respect for family life but that, as the appellant accepted, it was in accordance with the Immigration Rules. At §47, the Judge concluded that the appellant's wife was not a qualifying partner because at the time she had only limited leave to remain in the UK and the Judge was not satisfied that the appellant had a parental relationship with his wife's son. The Judge noted the son's best interests and social worker reports but had concerns about the reliability of those reports, which he analysed and explained at §§50 to 51. The Judge concluded that he was satisfied that it was in the child's best interest to remain in the UK within the current household comprising the son, his mother and the appellant and as per guidance in Smith (paragraph 391(a) – revocation of deportation order: Jamaica [2017] UKUT 166(IAC), at §53, the need for strong public policy reasons to justify continuing the order, given the period of time since it had originally been issued, but in this case, the appellant's repeated breaches of immigration controls justified that. The Judge accordingly dismissed the appellant's appeals.

The appellant's grounds of appeal

9. The appellant raises three grounds in respect of which permission was granted by Judge Brewer of the First-tier Tribunal on 18th May 2023. Ground (1) was that the Judge had failed to take into account that there was evidence that the stepson was a British citizen, with a copy of his British passport in the bundle before the Judge. I pause to observe that that is an area of challenge that is not disputed by the respondent, and there is a copy of that bundle although the respondent makes clear that she does not accept that it was a material error such that the Judge's ultimate conclusion was unsafe and should be set aside.
10. As ground (2), the appellant argued that the Judge had attached insufficient weight or had given unsustainable reasons for finding that the appellant did not have a parental relationship with his stepson. The Judge had accepted the expertise of two social worker reports at §49 but explained concerns about them nevertheless at §§50 and 51. The Judge should have given greater weight to those reports as to sustaining or providing the support for the existence of a parental relationship, including at section 7.1 of the first report, and section 10 of the second, both of which supported the claim, and in respect of the fact that the social worker had spoken to the appellant's stepson's biological father.
11. In ground (3), the appellant submits that the Judge had not analysed the respondent's erroneous grant of leave to the appellant when considering the impact of the deportation order on the appellant's family.
12. Judge Brewer of the First-tier Tribunal granted permission on 18th May 2023. The grant of permission was not limited in its scope.

The hearing before me

13. I turn to my decision and in doing so I have considered both the Rule 24 response and also the representatives' oral arguments before me today. I thank both representatives for the clarity of their submissions which I have considered in full, but I only explain and discuss them further where it is necessary for me to explain my decision.

Grounds (1) and (2)

14. Whether the Judge's error in failing to note the child's British passport is such that his decision is not safe and cannot stand is ultimately one that is tied up with ground (2). The reason for this is that the Judge had concluded that there was a family relationship but not a parental one, between the appellant and the child. He had proceeded on the basis that the mother and child would remain in the UK and concluded that the effect of deportation would not be unduly harsh. In reaching that conclusion, the Judge's focus included the nature of the relationship between the appellant and the child. I do not say that the status of the child was irrelevant but ultimately where, as here, the Judge found that the relationship was not as claimed, the Judge had, in essence, considered the scenario of where the child would not lose the benefit of British citizenship.
15. I turn to the central challenge in this case, namely the Judge's analysis and rejection of the claim that the appellant had a parental relationship with his wife's child. The grounds themselves refer to the Judge's analysis of the two expert reports and the Judge's acceptance of their expertise. Mr Sowerby's submissions appear to have a slightly different basis and he pointed to the respondent's 2023 decision, where the at §§36, 37 and elsewhere, it refers to a "stepchild" and then at the end of §37: "As such, it is not disputed at this time that your client has a genuine and subsisting relationship with his stepchild". Mr Sowerby argued before me that there is only one sensible conclusion where there is a reference to a stepson on multiple occasions and there is the acceptance of a genuine and subsisting relationship, namely that the relationship is a parental one. Mr Clarke argued that there has been no concession in absolute terms as to the existence of a parental relationship between the appellant and the child.
16. I do not accept that the respondent conceded that there was a parental relationship. First, the 2013 decision does not have only the meaning contended for by Mr Sowerby. The acceptance was of a relationship. Second, the Judge referred in the issues before him to the respondent not accepting that there was a genuine and subsisting parental relationship (§12). The application for permission did not challenge this. The Judge then went on at §17 to refer to RK and Ortega and the principle that "'parental relationship" does not require the exercise of parental responsibility, but the provision of care is not of itself sufficient, and each case must be assessed on its particular facts." The Judge was clearly sensitive to the fact that one may have a genuine family relationship, but this may not be the same as a parental relationship particularly where albeit on a fact-sensitive basis, there is an ongoing relationship between a child and the biological father.
17. In summary, the Judge did not, as Mr Sowerby contends, go behind a clear and unambiguous concession by the respondent that there was a parental relationship. Where, as here, the Judge has referred to discussing the issues with the representatives and then gone on to cite the questions of Ortega and RK, I do not accept the Judge was not entitled to consider the issue. To reiterate, there is not a ground of appeal before me that there was a procedural error

where the Judge took into account an issue on which the parties did not have an opportunity to make representations.

18. I come on to the focus of the grounds as originally drafted and in particular the two expert reports. I further accept on the one hand that there were two expert witnesses, but on the other (as Mr Clarke points out) that expert reports are not binding upon Tribunals. The Judge did accept the authors' expertise but also explained clearly his concerns about the expert evidence. At §50, he was concerned about how one expert could refer to the child's "natural understanding of the British way of life, an expectation of western values in terms of law and order", where that child was only two years and four months old. That did not, in the Judge's view, display the type of objective analysis one would expect to see in an expert report. Also, the author had relied in large part on accounts given by the appellant and his wife and was not, for example, aware of the childcare assistance given to the appellant's wife by her sister.
19. At §51, the Judge noted that in relation to the second report the author was unaware that the appellant was working and erroneously described him as the child's "full-time carer". I am satisfied that those were permissible considerations for the Judge, in evaluating the evidence.
20. The Judge took into account the child's best interests (§53) but concluded that the effect of maintaining the deportation order impact on the child, the mother and the appellant was not unduly harsh, if mother and child were to remain in the UK (§53).
21. The Judge's error on ground (1) was not such that the Judge's decision was not safe and should be set aside, where the Judge's reasoning proceeded on the basis that the appellant did not have a parental relationship with the child, even if he had a family relationship and the child and mother would remain in the UK, as opposed to leaving the UK.

Ground (3)

22. The Judge was unarguably conscious of the brief and erroneous grant of leave, referring to it at §§4 and 26(e). It was granted shortly before the appellant left the UK in December 2021; the Judge noted the respondent's case that it was granted in error and followed swiftly by the refusal of re-entry in January 2022. The Judge took the appellant's case at its highest, that he had not been told that the grant of limited leave was in error (§20). While the Judge did not refer expressly to the erroneous grant further in his decision, the Judge did take into account the appellant's immigration history, at §28, which also included the appellant's disregard for entry procedures, and the strong public policy grounds in maintaining the deportation order. The Judge took into account the same immigration history, as part of all of the evidence, when considering the child's best interests at §52, immediate before reaching the conclusion at §53 relating to the effect of deportation on the appellant, his wife and child. When the decision is read as a whole, the Judge's decision's decision was sufficiently reasoned and open to him on the evidence before him.
23. In conclusion, the Judge's decision is safe and stands.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law, such that his decision should be set aside.

The decision of the First-tier Tribunal stands.

No anonymity direction is made.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14th August 2023