



IAC-BH-PMP-V1

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

Appeal Number: AA/11012/2013

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 12th October 2015**

**Decision & Reasons Promulgated
On 3rd December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**EBE
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the avoidance of confusion, I shall continue to refer to the parties as they were before the First-tier Tribunal.
2. On 9th September 2014 Judge of the First-tier Tribunal J M Lewis gave permission to the respondent to appeal against the decision of Judge of the First-tier Tribunal Hague in which he dismissed the appeal on asylum and humanitarian protection grounds but allowed it on human rights grounds under the Immigration Rules against the decision of the respondent to refuse asylum, humanitarian and human rights

protection to the appellant, an adult female citizen of Cameroon whose minor son is a dependant in the appeal.

3. At the initial hearing of this appeal in the Upper Tribunal on 19th May 2015, I reached the conclusion that the decision of Judge Hague contained an error on a point of law in relation to the human rights issues for the reasons which I quote, below:

“Error on a Point of Law

3. The grounds of application are brief and contend that the judge made a material misdirection of law when applying the requirements of Appendix FM paragraph EX.1. That is because the judge appeared to have overlooked the requirements set out in EX.1.(a)(ii) which required consideration of whether or not it would be reasonable to expect the appellant's child to leave the United Kingdom.
4. Permission was granted on the basis that, whilst the judge had comprehensively rejected the evidence of the appellant and dismissed the asylum appeal, he was arguably wrong to allow the appeal under paragraph EX.1 without considering the reasonableness test which the paragraph contains.
5. At the hearing the appellant was unrepresented. I therefore spent some time explaining to her the nature of the application particularly the need for me to consider, first, whether or not the decision of the First-tier Judge actually showed an error on a point of law. I also made it clear to the appellant that the grounds of application did not take issue with the judge's adverse credibility findings and his conclusion that the appellant was not a refugee or entitled to humanitarian protection. The appellant indicated that she understood my explanation. The appellant also indicated to me that, if the issue relating to her human rights claim were to give rise to a further hearing, she would wish to call the British father of her child, SE, as a witness, although he was not with her at the hearing before me.
6. Ms Johnstone confirmed that the respondent relied upon the grounds. She also indicated that, if an error on a point of law was found, then it would be appropriate for the matter to continue to be heard in the Upper Tribunal on the limited human rights issue involved.
7. After I had considered the matter for a few moments, I announced that I was satisfied that the decision showed an error on a point of law in relation to the human rights claim although I also indicated that the judge's decision to dismiss the asylum and humanitarian protection claims should stand. I now give my reasons for that conclusion.
8. The judge's consideration of paragraph EX.1. in Appendix FM of the Immigration Rules is brief. In paragraph 17 of the decision he simply finds that, as the appellant is the primary carer for her son who is a British citizen, the requirements set out in paragraph EX.1.(a) had been met and that aspect of the appeal could be allowed. That conclusion is in error because the judge fails to give any consideration to sub-paragraph (a)(ii) which requires that not only should the applicant have a genuine and subsisting parental relationship with a child who is a British citizen in the UK but that it would not be reasonable to expect the child to leave the United Kingdom. The judge's failure to consider that requirement amounts to an error on a point of law such that the decision should be re-made in relation to human rights issues only. The decision in relation to the asylum and humanitarian protection claim can stand.”

Resumed Hearing

4. At the resumed hearing the appellant was again unrepresented so I explained to her the nature of the proceedings and the limitation to human rights issues. I also assisted her to give evidence by asking her questions about the relevant issue including, in particular, her relationship with her son, EE, born on 27th August 2011 and his father, SE.
5. The appellant indicated to me that the father of her child was not present to give evidence at the hearing. I therefore asked her if she wished to apply for an adjournment but she indicated that she wished to proceed with the hearing in any event. Mr McVeety helpfully agreed that he would not object to me taking into consideration the evidence given by SE which is summarised in the decision of Judge Hague particularly at paragraph 16.
6. The appellant then gave evidence with my assistance. She adopted those parts of her statement dated 21st March 2014 which relate to her relationship with the father of her child and also her conviction when sentenced to ten months' imprisonment whilst pregnant with SE's child. She was released from prison on 5th July 2011 following which she claimed asylum.
7. In oral evidence before me the appellant stated that she met SE in about 2009 when she had been in the United Kingdom since March 2005. At the time of meeting SE she had no status. They ceased their relationship when she was two and a half months' pregnant with her son although SE then came back to see her after the birth. SE had not wanted her to have the child. She claimed that SE paid £100 per month into her son's Lloyds bank account or paid it in cash when he is the country. However, she had no evidence with her to confirm the payments.
8. The appellant states that her son is now 4 years of age and attends St James' Infant School reception class in Derby. She showed me a copy of her son's passport to confirm that he is a British citizen.
9. As to her own background, the appellant said that she had left Cameroon in 2001 to go to Holland and then came to the United Kingdom in 2005. Both her parents are dead but she has cousins in Cameroon to whom she speaks on the phone. They live in Buea which is close to the city of Douala. When in Cameroon she worked on a farm with her parents after she had finished school at the age of 18. Her brother lives in Holland and he is married.
10. She claimed that she could not return to Cameroon with her son because the latter is close to his father who gives him "benefits". However SE says he cannot look after his son because of his own family commitments. The appellant said that SE now lives with another son who is attending Coventry University. He is not married to the mother of that child. The appellant emphasised that she did not know what she would do if she returned.
11. In cross-examination it was put to the appellant that SE was receiving tax credits for the appellant's son and questioned how he could receive these when he was not living with his son. The appellant conceded that she did not tell the tax authorities about this and had no idea what SE had told them. She said that he obtains the child

benefit and then gives it to her son. She then pointed out that payments had only been made for a year after her son became 3 years of age.

12. The appellant agreed that her son was still in good health. She said that she was from the English speaking part of Cameroon as were her cousins and that she had no other family in the United Kingdom. She confirmed that SE had a son in Cameroon and that he travels to that country often. He was not involved in taking the appellant's son to school or to meet appointments. However he did sometimes stay at his father's house at weekends.

Submissions

13. Mr McVeety indicated that the main issue was that arising under section EX at paragraph EX.1.(a)(ii) namely, that it would not be reasonable to expect the appellant's child to leave the United Kingdom with her. The same test arises under Section 117B(6)(b) of the 2002 Act. He also argued that the respondent's obligations to have regard to the best interests of the child in accordance with the provisions of Section 55 of the Borders, Citizenship and Immigration Act 2009 could be covered by the consideration of Article 8 issues in general. These matters were not covered in detail in the respondent's refusal dated 28th November 2013 because, at that stage, the child's parentage had not been established because the appellant previously claimed that the father of her child was a French national.
14. Mr McVeety drew attention to the appellant's poor immigration history reminding me that she had received a ten month prison sentence for the use of false EEA documents. He strongly argued that the best interests of the appellant's child were to be with its mother. There were no medical issues to consider and the appellant's asylum and humanitarian protection appeals had been dismissed. He also questioned whether the appellant had only the limited family members living in Cameroon when her credibility, generally, had been shown to be in issue. The appellant had worked in the United Kingdom illegally without any status and only claimed asylum when she was about to be released from prison. He argued that the father of the appellant's child had, apparently, only recently claimed child benefit when the child was not living with him and had not attended the hearing to give evidence as anticipated. He also pointed out that, if the appellant were to return voluntarily, she could obtain assistance to do so.
15. The appellant emphasised that she would not have anywhere to live if she returned to Cameroon and thought it would be better if she were sent to Holland where her brother lives. She believed that her son would be at risk if returned to Cameroon as she would be a single mother. He would also have lost his relationship with his father. She explained that she had been told by SE that he would try to attend the hearing but she thought he might be working.

Decision and Reasons

16. Only human rights issues arise for my consideration because I have already decided that the findings of the First-tier Judge in relation to the appellant's asylum and humanitarian protection claims can stand.
17. In reaching conclusions about the human rights claim which involves, as a primary consideration, the best interests of the appellant's child as well as the interests of the

appellant, I have regard to the conclusions of the Court of Appeal in *SS (Congo) and Others* [2015] EWCA Civ 387. That decision requires me to consider Article 8 matters under the Rules first and only to move to consideration of such issues outside the Rules where there are compelling or exceptional circumstances which lead me to conclude that there is a “gap” between the Rules and Article 8 and that this is a case outside the class of cases which the Rules properly provide for.

18. The respondent has helpfully conceded that the main issue in this appeal is that raised in section EX.1 on the basis that it is accepted that the appellant’s child is a British citizen. That issue is whether or not it would be reasonable to expect the appellant’s child to leave the United Kingdom. I am satisfied, for the reasons which now follow, that it would be reasonable.
19. Case law makes it clear that, normally, it is in the best interests of children to be with their parents (*Azimi-Moayed (Decisions affecting children; onward appeals)* [2013] UKUT 197 (IAC). Also, in *LD (Article 8 – best interests of child)* [2010] UKUT 278 (IAC), the Upper Tribunal stated that weighty reasons would be required to justify separating a parent from a lawfully settled minor child and from a community in which he or she had grown up and lived for most of his or her life. However, in this case, the respondent’s suggestion is that the appellant should go with her British son to Cameroon thus separating the child from its father. For the reasons which follow, I have reached the conclusion that it is in the child’s best interests to go with his mother to Cameroon and it is reasonable to expect this to happen even if it means separation from the child’s father.
20. The First-tier Judge heard evidence from SE, who originates from Cameroon, to confirm that he has a 20 year old son in Cameroon who is visited by SE in that country on a frequent basis. There is, therefore, the possibility that he can also visit his son, EE, in the country. However, whilst I accept that SE maintains an interest in EE the evidence does not suggest that there is a strong relationship between them or that he would follow up any opportunity to see EE in Cameroon. SE leaves the UK for lengthy periods of time because of his work for Oxfam and has other family commitments. He is said to be living with another son who currently attends Coventry University. SE was not enthusiastic about the appellant having a child in the first place and, at the time of the First-tier hearing, he was not paying any maintenance and now only makes payments for the child’s benefit from child allowance which he arguably should not receive. This evidence does not enable me to conclude that SE has a significant interest in the appellant’s son such that the child should remain in the United Kingdom so that he can maintain what I have concluded is a casual relationship. SE has not attended to give evidence which might displace my conclusions.
21. It is also evident that the appellant’s son has only recently started school in the United Kingdom in a reception class so is not at a stage in his upbringing where he has formed strong relationships and would be unable to settle into Cameroon with his mother. Although the appellant claims that she cannot return to Cameroon she stated that she has relatives living there even if her parents have died. She lives in the English speaking part of the country so there will be little or no difficulty with communication for either her or her child. No evidence has been put before me to suggest that the appellant cannot take advantage of an assistance package to return to her home country or that her relatives there cannot assist her. She has suggested

that it would be better if she were able to go to Holland where her brother lives but I cannot assume that she has any entitlement to go to that country.

22. In all the circumstances I reach the conclusion that it would be reasonable to expect the appellant's child to go with her to Cameroon. Thus, the provisions of the Immigration Rules, particularly those in section EX cannot avail the appellant.
23. I have considered whether there might be any compelling or exceptional circumstances which mean that I should consider human rights issues outside the Rules. I am not satisfied that the circumstances which I have already highlighted and, in particular, the relationship between the appellant's son and his father, can give rise to consideration of human rights issues outside the Rules. All the relevant factors have, I conclude, been considered in my examination of whether or not it would be reasonable to expect the appellant's child to go with her to Cameroon. The fact that the appellant's child is a British citizen does not, of itself, mean that the child should remain with its mother in the United Kingdom. Section 117B of the 2002 Act makes it clear that the public interest in removal remains where, despite the existence of a genuine and a subsisting parental relationship with a qualifying child, it would be reasonable to expect the child to leave the United Kingdom. I have already examined that test and found that it cannot benefit either the appellant or her child. In reaching that conclusion I also have to bear in mind that the appellant has a very poor immigration history which has involved imprisonment for the use of false identity and that any private life, in addition to family life, established in the United Kingdom has been when her immigration status is clearly precarious. Thus, even if I were to consider the issues outside the rules, taking the best interests of the appellant's child as a primary consideration, I would be unable to conclude that the respondent's decision is disproportionate.

Decision

The appeal is dismissed on asylum, humanitarian and human rights grounds.

Anonymity

As this appeal involves the interests of a young child I make the following anonymity direction:

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Garratt