



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

Appeal Numbers: IA/37957/2013  
IA/41164/2013

**THE IMMIGRATION ACTS**

**Heard at Field House, London**

**Decision and Reasons  
Promulgated**

**On 27 October 2015**

**On 4 November 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

**Between**

**CARL ANTHONY POORMAN (1)  
CALEISA GWENDOLYN POORMAN (2)  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Clarke, instructed by Fadiga & Co, Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. There was no request or need to direct anonymity in the proceedings in the First-tier Tribunal and there is no need to do so in the Upper Tribunal.

## *Background*

2. The appellants are father and daughter. Both are citizens of Jamaica, born respectively on 31 March 1985 and 18 December 2009. They appeal the immigration decisions of 3 September 2013 to remove them following refusal of their human rights claims.
3. The first appellant has three children in the UK born to different mothers, one of whom is the second appellant. The first appellant claims to have genuine and subsisting parental relationships with all three children but his claim to be permitted to remain in the UK is based in essence on his relationship with his son Raekwon who is a British citizen. The second appellant's human rights claim depends primarily on the assessment of the first appellants' relationship with his son.
4. The two appellants have a lengthy appeal history. Their appeals were originally allowed on 22 March 2014 by First-tier Tribunal Judge Majid but the Home Office successfully appealed to the Upper Tribunal against those decisions resulting in the appeals being remitted for fresh decisions. The remitted appeals were dismissed by First-tier Tribunal Judge K Miller on 29 December 2014, and it is against that decision the appellants were granted permission to appeal.

## *Legal error*

5. Having considered the written and oral arguments of both parties, I decided that Judge Miller's decision errs in law for the following reasons.
6. I find that paragraph 32 of the decision and reasons statement is unsound because Judge Miller failed to have regard to all the evidence that had been provided regarding funds transferred by the first appellant to Raekwon. The judge refers to seeing only nine receipts when in fact 30 were provided. It is perhaps unfortunate that the solicitors who prepared the bundles of documents did not put all the receipts in the same place or provide a schedule of payments but it is clear that the receipts were all available to Judge Miller to consider. The failure to consider all the evidence was material to the judge's findings because they showed that payments were made more or less consistently from 2008 and not merely connected with pending appeal hearings as he found.
7. Furthermore, the judge's findings in relation to these payments are unsound because he considered that the payments were not made by the first appellant himself but by the brother of the first appellant who used the first appellant as a conduit for such payments. It is difficult to sustain this finding because although the first appellant admitted to receiving financial support from his brother, at no juncture has the first appellant or his brother ever suggested that a portion of the financial support provided was to be used to maintain Raekwon. The evidence merely established that the first appellant's brother gave financial support for the first appellant to use however he wished. As there was no evidential basis for

the inferences drawn, the reliance on those inferences further undermines the findings made.

8. In addition, it is questionable whether Judge Miller correctly identified the payments made into the child's savings account as maintenance. There was evidence that the first appellant had contributed to Raekwon's upkeep by buying shoes and school uniform as well as helping out in other ways but this was separate from the deposits to the savings account. This confusion undermines not only the findings in paragraph 32 but also those in paragraph 39. In paragraph 39, Judge Miller inferred from his earlier findings regarding maintenance payments to Raekwon that the first appellant had failed to establish that he had a genuine and subsisting parental relationship. In light of the confusion and the errors in assessing the evidence, that finding was not open to the judge and amount to legal error.
9. There is one other area where I find legal error. At paragraph 29, Judge Miller described the evidence he had as "poor and outdated" and drew negative inferences from the fact that no new evidence had been provided despite the appellants having access to reputable legal advice. I find this to be an illogical approach to the evidence. First, if there was no change in the appellants' circumstances then there was no need to provide further evidence. Secondly, if the judge had such doubts they should have been put to the appellants to rebut or time given to provide additional evidence. Thirdly, even if the allegation might have been appropriate to the relationship between the first appellant and his son, Theo, it was not open to the judge to reject all of the available evidence. Fourthly, the judge should have had regard to the appeal history and recognised that the evidence had been provided in accordance with the original directions and no further directions had been issued.

*Remaking the decision in relation to the first appellant*

10. Having found that Judge Miller's decision and reasons statement contained legal errors I decided that it should be set aside. The parties accepted that given the passage of time it was appropriate to set aside all the findings made, even those relating to the second appellant and the first appellant's other son, Theo.
11. Being aware that the first appellant, Raekwon, his mother and other family members had attended the Upper Tribunal, and being aware that the appellants had provided an up to date bundle of documents as per the Upper Tribunal's directions that if an error of law was found it intended to proceed immediately to remake the decision, and having given additional time to Mr Avery to prepare for the rehearing, the parties agreed that it was appropriate to rehear the appeal in the Upper Tribunal without further delay.
12. Mr Avery relies on the reasons for refusal letter of 30 August 2013 and the other documents in the Home Office bundle together with an extract from

the Immigration Instructions about whether there is a genuine and subsisting parental relationship (section 11.2.1). The appellants rely on the documents submitted to the First-tier and Upper Tribunals in three bundles (cover letters of 21 February 2014, 27 November 2014 and 23 October 2015) and one additional documents submitted on 24 February 2014. At the hearing I heard from the first appellant, his son Raekwon and Raekwon's mother, Ms Suzi Pululu.

13. In case it is of any relevance, when I heard from Raekwon, bearing in mind he is only 12 years old, I took into account the Presidential Guidance relating to vulnerable witnesses and ensured that he was comfortable giving evidence and that he knew why he was giving evidence. His father sat next to him whilst he gave evidence, including whilst he was cross examined. I am grateful to Mr Avery for respecting Raekwon's age and asking age appropriate questions so that full evidence could be obtained. In light of the responses given by Raekwon, I am satisfied that he was able to give his best evidence despite the circumstances of being in one of the formal basement hearing rooms in Field House.
14. The parties agreed that the primary finding I had to make was whether the first appellant had a genuine and subsisting parental relationship with Raekwon. If I so found, then it followed that either by application of paragraph EX.1 of appendix FM to the immigration rules (which would be reached via the parental route provisions of section R-LTRPT) or by application of s.117B(6) of the 2002 Act, the appeal of the first appellant would succeed because it would not be reasonable to expect Raekwon to leave the UK as he is a British citizen whose primary carer is also a British citizen because to expect him to leave the UK would be to deprive him of his rights as a citizen and of the continuation of his care arrangements.
15. It is not necessary for me to set out all of the evidence given by the first appellant, his son or his son's mother. The first appellant and his son's mother adopted the witness statements they had prepared in advance of the hearing. Raekwon wrote a letter for me which he read out as part of his evidence. The evidence of these three witnesses is so highly consistent that I have no doubt that the first appellant has played and continues to play an important role in Raekwon's upbringing. It is evident that he has not always had an easy relationship with Ms Pululu but that in recent years that relationship has improved because Ms Pululu has recognised that regular contact between her son and the first appellant is beneficial to her son's development. The closeness of the first appellant's relationship to Raekwon was not only evident in the evidence given by them both but by their interaction during the hearing. The evidence, when taken as a whole, leads me to the conclusion that the first appellant is making "an active contribution to the child's life."
16. In reaching this conclusion, as I have indicated, I have had regard to the written and oral evidence provided. The documentary evidence shows that the first appellant has contributed financially to Raekwon as discussed above. The new evidence verifies that has continued. Although, as Mr

Avery submitted, the financial support is minimal, it helps establish that the first appellant has been involved in his son's life for a number of years.

17. I have also taken into consideration Mr Avery's submissions which highlighted factors that might weigh against the relationship. He reminded me that Raekwon did not live with the first appellant and that the relationship had been rocky. He also indicated that there was some possible exaggeration in the first appellant's accounts, particularly those at the earlier hearings. He also identified that there was no guarantee that the current arrangements might not fall apart.
18. Although I acknowledge these criticisms, I have to consider the relationship as at the date of hearing. I have no reason to find that Ms Pululu exaggerated her evidence of the first appellant's involvement with Raekwon and the genuineness of that relationship. The relationship was also clearly demonstrated in Raekwon's own testimony in which he not only described his regular meetings with his father but also why his father's presence was important to him. Ms Pululu explained that she had changed and that she had sought to improve her relationship with the first appellant because of the important role he played in Raekwon's life. This indicated to me that the current arrangements are more permanent than previous arrangements.
19. Because I find that the first appellant has a genuine and subsisting parental relationship with Raekwon and because it would not be reasonable to expect Raekwon to leave the UK I am satisfied that the provisions of paragraph EX.1 are met and therefore the first appellant succeeds under the provisions of section R-LTRPT of appendix FM.
20. In the alternative, I find that there is family life between the first appellant and Raekwon and that the immigration decision has the potential of severely disrupting that relationship. Although the decision is in accordance with the law, given the provisions of s.117B I find that there is no public interest in removing the appellant and therefore the immigration decision is not proportionate in respect of Article 8 ECHR.

*Remaking the decision in relation to the second appellant*

21. Although this deals with the first appellant, it leaves the second appellant in a peculiar position. At the date of hearing she is not the child of a person with limited leave to remain and therefore cannot benefit from the provisions of appendix FM. Although I have allowed the appeal of the first appellant, that decision does not confer leave on him. Nor can the second appellant benefit from paragraph 276ADE because she has not lived in the UK for over seven years and is not a British citizen.
22. The evidence before me is that the first appellant lives with the second appellant and the second appellant's mother. There is no dispute that the first appellant enjoys family life with the second appellant and her mother; they live together as a family unit. To remove the second appellant from

the UK would put the first appellant in an impossible situation. He has family life with Raekwon which would be disrupted should he leave the UK but if the second appellant were to leave the UK then his relationship with that child would be disrupted.

23. I also take into consideration the fact that the second appellant has her own relationship with her step brother, Raekwon, which both mothers and the first appellant encourage. This relationship would end if the second appellant were removed from the UK. On its own the evidence for this relationship would not be sufficient to outweigh the public interest considerations in maintaining effective immigration controls but this evidence cannot be taken on its own. In context, it strengthens the second appellant's position in relation to s.117B of the 2002 Act and weakens the public interest in removing the child because to do so would be to disrupt the continued development of two children. Such disruption cannot be regarded as in either of their best interests.
24. This is a case where the first appellant has a complex family life, enjoying family life with two children who have different mothers. As it is unreasonable to expect Raekwon to leave the UK, on the evidence before me I have to conclude that the decision to remove the second appellant from the UK cannot be proportionate.

#### *Other issues*

25. I have heard no good evidence that the first appellant continues to have a genuine and subsisting parental relationship with his other son, Theo. The evidence suggests that Theo's mother prevents the first appellant having contact. Therefore, I have not considered this part of the first appellant's claim.
26. With regard to my decision in favour of the second appellant, I realise it is likely to have implications for her mother. Those implications are not ones on which I can make any finding because no immigration decision has been made against that individual and therefore I have no jurisdiction.
27. In light of these considerations, I find that the second appellant's appeal is allowed under Article 8 ECHR applied directly because her situation is one not contemplated in the immigration rules.

#### **Decisions**

The decision and reasons statement of First-tier Tribunal Judge K Miller contains an error on a point of law and is set aside.

I remake the decision in respect of the first appellant and allow it under paragraph EX.1 of the immigration rules and in the alternative under Article 8 ECHR.

I remake the decision in respect of the second appellant and allow it under Article 8 ECHR applied directly.

I make no anonymity order.

I make no fee award even though I have allowed the appeals because the evidence before me is not what was available to the decision maker at the date of decision.

Signed

Date

Judge McCarthy  
Deputy Judge of the Upper Tribunal