



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/25939/2015

THE IMMIGRATION ACTS

Heard at Field House
On 8th December 2017

Decision & Reasons Promulgated
On 8th December 2017

Before

UPPER TRIBUNAL JUDGE COKER

Between

RALPH LINCOLN LAWN WILLIAMS

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Osadebe of Zureil Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Mr Williams arrived in the UK on 9 April 2012 with entry clearance as the spouse of Annette Mullinger, a British Citizen. He had leave to enter until 26 February 2015. That relationship broke down and they were divorced on 17 April 2014. On 15 January 2015, he sought to vary his leave to remain, such application then being varied to an application for leave to remain as the spouse of Emma Snow, a British Citizen whom he had married on 27th October 2014. That application was refused and his human rights application refused by the respondent for reasons set out in a decision dated 1 July 2015. His appeal against that decision was dismissed by First-tier Tribunal Judge M R Oliver in a decision promulgated on 1 March 2017. Mr Williams was granted permission to

appeal that decision on the grounds that it was arguable there had been inadequate fact finding, that the considerations of s117B had not been factored into the decision and the judge had failed to consider the best interests of the children.

2. The respondent did not file a Rule 24 response.
3. The First-tier Tribunal judge found the marriage between the couple to be genuine and subsisting. Ms Snow has a child from an earlier relationship and it appears from the First-tier Tribunal decision that there was evidence that the child had contact with his birth father although the extent of that contact is not revealed in the decision. The First-tier Tribunal judge gives sparse and wholly inadequate consideration to that child in the context of a genuine and subsisting relationship between the appellant and the child's mother. It is insufficient to state that

“...the appellant's relationship with his partner's son, are not circumstances so exceptional as to warrant consideration outside the rules, because they are common currency of relationships where children are involved who are not of both parties to the relationship.”

4. Although there appears to be a lack of evidence of the financial circumstances of the family, the failure to engage with the best interests of the child, the Immigration Rules generally and s117B Nationality, Immigration and Asylum Act 2002 renders the decision of the First-tier Tribunal infected with significant material errors of law.
5. I set aside the decision to be remade.
6. When I have set aside a decision of the First-tier Tribunal, s.12(2) of the TCEA 2007 requires us to remit the case to the First tier with directions or remake it for ourselves. Where there has been no hearing at all before the First tier and the facts are disputed or unclear we conclude that the decision should be remitted to the First tier judge to determine the appeal.
7. The Practice Statement dated 25th September 2012 of the Immigration and Asylum Chamber First-tier Tribunal and Upper Tribunal states:

7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

8. Given the paucity of reasoning and lack of adequate fact-finding I am satisfied that this case is one that should be remitted to the First-tier Tribunal for re-hearing.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the appeal to the First-tier Tribunal to be re-heard.

Date 8th December 2017



Upper Tribunal Judge Coker