



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/10307/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 17<sup>th</sup> April 2018

Decision and Reasons Promulgated  
On 09<sup>th</sup> July 2018

Before

THE HONOURABLE MRS JUSTICE LAMBERT DBE  
UPPER TRIBUNAL JUDGE KING TD

Between

MR JOHN [D]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Olawanle, Solicitor, Del & Co Solicitors  
For the Respondent: Mr S Kotas, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Ghana born on 24<sup>th</sup> April 1974. He made an in-time application on 6<sup>th</sup> November 2015 for leave to remain in the United Kingdom on the basis of family and private life, which was refused on 6<sup>th</sup> April 2016. The focus of the application was that he was in a parental relationship with his son [E].
2. It was not accepted by the Secretary of State in the decision that the appellant was in a genuine and subsisting relationship with that child.

3. The appeal in respect of the matter came before First-tier Tribunal Judge Plumtre on 11<sup>th</sup> September 2017. At that hearing the appellant gave substantial oral evidence and produced a bundle of documentation, containing, in particular, certain bank accounts.
4. The evidence of the appellant was that he and Mrs [B], the mother of [E], had separated in 2013 but that he was still in regular contact with his son and paid towards his maintenance. He indicated that he had taken his son to the doctor on a number of occasions, bought him equipment and sees him on a regular basis. He pays to Mrs [B] approximately £100 each month towards the maintenance of his son.
5. The appellant indicated that although his salary was paid into his Barclays Bank account he would transfer money into his Lloyds account and then transfer that money to Mrs [B]'s Lloyds account [ - ].
6. The Judge found the appellant to be an untruthful witness who may have produced false documents in order to exaggerate his involvement in the life of his son [E]. She did not believe his oral evidence about the way in which he paid money into Mrs [B]'s Lloyds account, noting that on every occasion where there was a payment to Mrs [B]'s account there was a contra-payment in the Lloyds Bank statement for the same amount. She noted that there was no evidence of the appellant's claimed Barclays Bank account from which he allegedly drew money.
7. Significantly, an additional reason for finding that the appellant did not make regular financial contributions was the lack of earnings demonstrated by the P60 for the tax years 2014 and 2015 in particular.
8. The Judge went on to disbelieve the evidence as to contact on the documents that were presented to show that.
9. Complaint is made that in the analysis of the bank accounts and in particular in the analysis of the earnings of the appellant, the Judge had fundamentally misunderstood what was being said. It is far from clear from her decision as to what false documents were alleged. It is contended that the Judge's view as to the financial arrangements dictated her approach to all of the evidence.
10. Leave to appeal to the Upper Tribunal on that basis was granted by Upper Tribunal Judge Pitt on 27<sup>th</sup> January 2018. Thus the matter comes before us in order to determine the issue as to whether or not there was a material error of law.
11. At the time of the hearing before us there were two significantly sized bundles of documents, one filed on 6<sup>th</sup> September 2017, a further bundle filed on 7<sup>th</sup> December 2017, a bundle containing more detailed bank statements than had been previously presented.

12. The first matter that is apparent from the Barclays Bank statement of the appellant is that he was earning substantially more money than was accepted by the Judge. It was clear from the bank account that the appellant was receiving a regular and significant salary from Marks and Spencer plc and from Sainsbury's Plc.
13. Having heard further from the representative in terms of the various bank accounts, it seems to us that the learned First-tier Tribunal Judge may well have misunderstood the rather complicated methodology adopted by the appellant for payment to Mrs [B]. We have seen her bank accounts and it is apparent to us that there were indeed regular transfers of money from the appellant so described to her and particularly in 2017 and 2016.
14. We are concerned also that although reference is made to potentially false documents there is little indication as to what such documents might be. Two possible documents are identified in paragraphs 39 and 40 of the determination in relation to an email and to a Fathers' Day card but there was no indication that those concerns were raised with the appellant for his comment.
15. It is said by Mr Kotas that there is little evidence to support the regular contact that is claimed as between the appellant and [E].
16. There is some evidence which the Judge found to be of little value and gave little weight to such documents as presented in support thereof.
17. A concern which was raised in this appeal, and one which we find to have substance, is that the Judge, having possibly misunderstood the nature of the financial evidence, was influenced thereby to reject other matters that had been raised by the appellant, such as to fundamentally undermine the credibility.
18. It seems to us that there is merit in that contention that the view of the Judge as to one aspect of the evidence, albeit an erroneous view, was such as to unfairly taint her attitude to the rest of the evidence. Fairness demands that the appellant's evidence as a whole be considered within the proper and balanced context.
19. That having been said, payment of money of course is only part of the relationship that needs to be established. There needs also to be a genuine and subsisting relationship and the comment made by the Judge, was a significant one, namely that there was very little detail about contact from the former partner. There were statements from her which were contradictory and she was not there. There was nothing from [E].
20. It seems to us that this is a decision which should in fairness be set aside in order for there to be a full rehearing on the issues on a proper basis. It may be that the appellant needs to produce further evidence of contact and/or produce further evidence from Mrs [B] or indeed from [E]. Given the complexity of the bank statements and the financial arrangements that were set out, it may be helpful at a further hearing for there

to be a properly prepared schedule with clear examples as to how the money has come to be transferred. Such would save court time.

**Decision**

The decision of the First-tier Tribunal is set aside to be remade by way of full rehearing in the First-tier Tribunal.

No anonymity direction is made.

A handwritten signature in black ink, appearing to read "P. L. King", enclosed within a thin black rectangular border.

Signed

Date 4 July 2018

Upper Tribunal Judge King