



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

Appeal Number: HU/15212/2016

THE IMMIGRATION ACTS

Heard at Manchester IAC

**Decision & Reasons
Promulgated:
On 15 March 2018**

On 8 March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**WA
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V. Jagadesham, counsel instructed by GMIAU

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

DECISION AND REASONS

1. I make an anonymity direction as the appeal involves a British child.
2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Pickup. I shall say immediately that the task of the Judge was made difficult because of two reasons. Firstly, he had dealt with the case as a 'float' case and there was no Home Office Presenting Officer to assist. Secondly, as the grant of permission by Upper Tribunal Judge Jordan highlights, the Appellant's former legal advisers (Mamoon Solicitors Ltd) totally missed one of the most

important basis upon which the Appellant could have appealed to the Tribunal.

3. The Appellant had appealed against the Respondent's decision to refuse leave to remain on the basis of his private and family life with his partner and her child.
4. The Judge made very detailed findings against the Appellant. The grounds of appeal drafted by the Appellant's former solicitors are of a poor quality. As Upper Tribunal Judge Jordan noted though, there was more to the case because crucial elements were not noted. As I say, this may well have been because the Respondent was not represented and the Appellant's former solicitors simply missed the pertinent points. In any event though, Judge Jordan said the following when granting permission,

"The First-tier Tribunal Judge made some scathing remarks about the nature of the relationship between the appellant and his partner but I am doubtful whether those criticisms survive the birth of their child (post decision but in contemplation)."

5. Mr Jagadeshm informed me that despite seeking the file of papers from the Appellant's former solicitors, it has still not been provided. That is regrettable. In any event, I provided him with some of the papers from the Tribunal's file and I put the case back to enable him to consider the case further. Mr Jagadeshm had prepared a helpful skeleton argument in readiness for the hearing. The submissions were numerous, but in my judgment, it is abundantly clear that an error of law is shown in the Judge's decision when one looks at paragraphs 23 and 24 of his decision.
6. The argument being that the Judge had already decided against the Appellant in respect of credibility issues up to paragraph 23 and then in conclusion at paragraph 23, but it was only thereafter at paragraph 24 when the Judge had already rejected the credibility of the Appellant that he went on to say,

"...and I cannot take into account a child as yet unborn, except that it may support the claim of a subsisting relationship".

7. The submission being that the Judge correctly identified that the unborn child was indeed capable of being evidence of a genuine and subsisting relationship, but the Judge did not take that evidence into account when undertaking his assessment of the evidence as a whole. The reason it is clear he had not have taken that evidence of the unborn child into account was because the Judge had already reached his conclusions as to the credibility of the Appellant and his claimed relationship in the paragraphs before. It is the *"except that it may support the claim of subsisting relationship"* which speaks of the necessity for that aspect to have been taken into account when assessing credibility about the genuine and subsisting nature of the relationship.

8. Mr McVeety explained he was not able to concede the appeal, but he noted that this was perhaps not a weak a case as some, especially in view of the pregnancy and other evidence.
9. There is post hearing evidence of the child being born to the couple and that is obviously not relevant to the error of law hearing, but the fact that the Appellant's claimed partner was pregnant and expecting a child was relevant. Added to that was the Appellant's partner's other child whom the Appellant treated as a child of the family.
10. It is abundantly clear that the Appellant did not endear himself to the Judge, but I conclude that the matter relating to the pregnancy was of such significance that it was essential for it to have been taken into account when assessing the evidence as a whole.
11. I have been careful to ensure that I am not merely disagreeing with the Judge who had had seen and heard the Appellant, but in my judgment it is not possible to overcome the deficiencies I have identified in the Judge's decision, particularly at paragraphs 23 and 24. They are of such a fundamental nature to undermine the decision as a whole.
12. Both parties agreed that if I had found there to be an error of law, then the matter ought to be remitted to the First-tier Tribunal for a re-hearing. I agree with those submissions so as to enable the Appellant to have a re-hearing on all issues. None of the current findings shall stand.

DECISION

The Decision of the First-tier Tribunal contains a material error of law and is set aside.

The matter is remitted to the First-tier Tribunal for a re-hearing on all matters.

An anonymity direction is made.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: Abid Mahmood

Date: 8 March 2018

Deputy Upper Tribunal Judge Mahmood