



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/22092/2016

THE IMMIGRATION ACTS

Heard at Field House
On 11 May 2018

Decision & Reasons Promulgated
On 25 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

MR ABDUL [R]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Fijikiala, Home Office Presenting Officer.
For the Respondent: Mr J Melvin, Counsel.

DECISION AND REASONS

1. The Appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were know

before the First-tier Tribunal with the Secretary of State referred to as “the Respondent” and Mr Abdul [R] as “the Appellant”.

2. The Appellant is a citizen of Bangladesh who made application for an extension of his leave to remain based on his relationship as a parent and in respect of his private life. The Respondent was not satisfied the Appellant had demonstrated a genuine and subsisting parental relationship with his child and that he did not meet the requirements for leave to remain based on his private life. He appealed that decision and following a hearing, and in a decision promulgated on 19 September 2017, Judge of the First-tier Tribunal Caskie allowed the appeal.
3. The Respondent sought permission to appeal which was granted by First-tier Tribunal Judge Mailer on 5 March 2018. His reasons for so granting were : -
 - “1. The appellant is a national of Bangladesh born on 25 June 1984. The First-tier Tribunal Judge allowed the appellant’s appeal on the basis that he has a genuine and subsisting prenatal (sic) relationship with his daughter [13].
 2. The grounds contend that the Judge failed to consider a statement from a social worker to the Family Court regarding the appellant’s harassment and threats to his wife which resulted in her breaking off contact. His wife did not attend the hearing. There was no evidence of her asserted illness and the Judge ‘was silent on this’. Apart from the appellant’s own assertions, there was no documentary evidence of his parental relationship with his child beyond four photographs and unspecified evidence from the contact centre. Nor did the Judge provide reasons for accepting that his wife is currently pregnant with his child.
 3. It is arguable that the judge failed to consider a relevant statement from a social worker and that he has not provided reasons for accepting the appellant’s bare assertions regarding his claimed relationship with his child and his wife’s pregnancy.
 4. Permission to appeal is granted on all grounds.”
4. Thus, the appeal came before me today.
5. Ms Fijikiala relied upon the grounds seeking permission to appeal. Firstly, that the Judge had failed to make mention in the decision of a statement by a social worker to the Family Court concerning the Appellant’s harassment and threats to his wife, which resulted in her breaking off contact. She expanded the ground contending that the Judge had failed to take account of the submissions made after the proceedings with specific reference to the absence of evidence from the Appellant’s wife (it was acknowledged that there was a witness statement but that she did not attend the hearing) and also the absence of any mention of a letter from CAFcass to the Luton Family Proceedings Court in relation to a hearing there on 12 October 2015. Therein is reference to the Appellant having no contact with his child “for almost a year”. In light of the issues in relation to the Appellant’s wife not attending the hearing and the failure to deal with the CAFcass letter the Judge’s reasoning is inadequate and particularly so in the absence of documentary evidence regarding the Appellant’s claim to parental relationship.

6. Mr Melvin wished me to accept that there was no material error within the Judge's decision. He submitted the Judge had considered the totality of the evidence before making findings which were open to be made. The Judge was entitled to attach such weight to the evidence as he did and the Respondent's appeal should be dismissed and the decision stand.
7. I find that the Judge has failed to give reasons or indeed any adequate reasons for findings made on material matters. The Judge failed to take into account and resolve conflicts of fact or opinion on material matters. It was incumbent upon him to consider the above mentioned CAFcass letter. It is plain from the decision that he did not do so. That evidence goes to the heart of the conflict between the two parties in these proceedings. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and accordingly I set aside the decision.

Decision

No anonymity direction is made.

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Caskie.

Signed

Date 24 May 2018.

Deputy Upper Tribunal Judge Appleyard

Directions

1. Both parties are directed to file any additional evidence in this appeal no later than 21 days prior to the date of hearing.