



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

Appeal Number: HU/02722/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 21st March 2019**

**Decision & Reasons Promulgated
On 3rd April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M R

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr L Tarlow, HOPO

For the Respondent: Mr A Alam of Counsel instructed by Syeds Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Hall made following a hearing at Birmingham on 20th November 2017.
2. The claimant is a citizen of Pakistan born in January 1979. He appealed against the Secretary of State's decision dated 3rd February 2017 refusing his human rights claim and his application for leave to remain in the UK on the basis of his family life as the parent of three children, and his private life.

3. The claimant arrived in the UK as a visitor on 10th September 2006. He overstayed his leave and remained illegally in the UK. He formed a relationship with MS, whom he did not marry, but they have three children all of whom were born in the UK. The couple have two daughters born in August 2011 and April 2013 and a son born in January 2015. At the date of the hearing the children were aged 6, 4 and 2.
4. MS and the children are citizens of Pakistan. They have been granted refugee status in the UK and have limited leave to remain until 18th March 2020. According to the Secretary of State's records, MS applied for asylum on the basis of being a parent without male support and she was granted status on that basis following an appeal which was promulgated on 7th January 2015.
5. The Presenting Officer before the present judge put him on notice that the Secretary of State's position was that questions needed to be asked about the relationship between the claimant and MS.
6. The claimant was asked a number of questions about his relationship with MS. He initially said that it had ended before their first daughter was born and when the question was repeated he said that he had not ended the relationship because of the children. He was then asked whether he and MS were still partners and he replied "partner". When asked whether he and MS were still together he said that they did not live together but they wanted to be together and they were sometimes in a physical relationship.
7. The judge recorded the evidence and at paragraph 27 wrote the following:

"I note the absence of any evidence from MS. The position regarding the relationship between the appellant and MS was not made clear following the oral evidence of the appellant. What is clear is that the appellant lived separately from MS and the children. This was confirmed by the independent social worker. I find it somewhat difficult to understand why the appellant would make an application for leave to remain on the basis that his relationship with MS was over if in fact they were still in a relationship. If the relationship is still subsisting the appellant may have been able to rely upon Appendix FM and in particularly EX.1(b) and claim that he was entitled to leave to remain based upon a genuine and subsisting relationship with his partner who is in the UK with refugee leave. My conclusion in relation to the relationship is therefore I will consider this appeal on the basis on which the application was made in that the appellant is seeking leave to remain to maintain contact with his children who have refugee leave."
8. Having concluded that the couple were not in a genuine relationship the judge went on to consider the best interests of the children. He said that their best interests outweighed the weight which must be given to the public interest in this case, and on that basis allowed the appeal.
9. The Secretary of State sought permission to appeal on the grounds that the judge had materially misdirected himself in law and had failed to take

into account the relevant provisions of Sections 117A to 117B of the Nationality, Immigration and Asylum Act 2002.

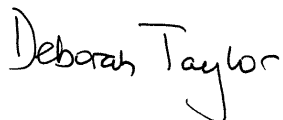
10. Permission to appeal was initially refused but subsequently granted by Upper Tribunal Judge Plimmer who said that it was arguable that the findings of the judge could not be reconciled with the claimant's own evidence. It was also arguable that when addressing the public interest, the judge failed to direct himself and to make findings on the Secretary of State's allegations of deception and bad faith on the part of the claimant and MS.
11. Mr Tarlow relied on his grounds.
12. Mr Alam submitted that they were a simple disagreement with the decision. There was no evidence of deception here. This was not the correct forum for the Secretary of State to make such an allegation but in any event the judge was entitled to accept the evidence that the couple were not living together from the independent social worker and to conclude that they were not in a subsisting relationship. Whether or not his ex-partner had gained refugee status on the basis of a deception was not a question before the Tribunal and in any event was immaterial since the Secretary of State has produced no evidence of deception.

Consideration of Whether there is a Material Error of Law

13. I conclude that the judge did err. He had evidence before him, from the claimant, that even though the couple were not living together the relationship had not ended, and that they wanted to be together and they were sometimes in a physical relationship with each other.
14. The point made by the judge at paragraph 27 above, that it was not in the claimant's own interests to say that he was not in a relationship with MS because he would have a better claim to stay if they were in a relationship, does not take account of the Secretary of State's submission that MS had gained refugee status on the basis of a deception. She claimed that she was a lone woman without male support but the evidence suggests this may not be true. The matter is material because if MS did gain status on the basis of deception it is likely that her status will be revoked and the family could then all return to Pakistan together.
15. The judge erred in law in making findings without taking into account all relevant matters and his decision is set aside.
16. Further evidence will need to be taken both from the claimant and if possible from MS. It will also be necessary to obtain the Record of Proceedings and the determination in the case of MS when her asylum appeal was allowed. For these reasons it is necessary for this matter to be reheard in the First-tier Tribunal before a judge other than Judge Hall.

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

Date 31 March 2019

Deputy Upper Tribunal Judge Taylor