



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001786

First-tier Tribunal No: HU/02789/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30th May 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

Muhammad Asif Khan
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms A Jones instructed by Abbott & Harris Solicitors Ltd.
For the Respondent: Mrs Arif, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 20 May 2024

DECISION AND REASONS

1. This appeal has a long history with the most recent hearing being on 17 August 2023 at Field House before Upper Tribunal Judge Pitt. That decision was promulgated on 25 September 2023.
2. Following consideration of the evidence Judge Pitt concluded that a judge of the First-tier Tribunal had materially erred in law to the extent that Article 8 ECHR needed to be litigated afresh.
3. A new matter arose at that stage, namely that the Appellant had been confirmed on the birth certificate as the biological father of his daughter Sophia who lives with her mother in Scotland.
4. Consent was sought from the Secretary of State who confirmed her his consent to this aspect of the case being considered as a new matter.
5. A bundle has been filed in accordance with directions from the Upper Tribunal to enable this hearing to proceed to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.
6. The Appellant attended court was cross-examined by Mrs Arif. His partner Ms Jeevan also attended but was not cross-examined.

7. Updated witness statements have been provided in the bundle from the Appellant.
8. In his statement dated 8 May 2024, the Appellant explains the situation in relation to Sophia. The child was born on 20 November 2015 and attends a local primary school near her home in Scotland.
9. The Appellant state since the birth of his daughter he has always been in regular contact with her. He met Sophia's mother in 2013. They were in a relationship for a few months but then she moved to Scotland whereas he lived in Birmingham. Contact was maintained by telephone until the relationship ended. In 2015 the Appellant states he was telephoned by his former partner who told him she was pregnant with his child although she was living with a new partner, with whom she was happy, and that if he wished to see his daughter, he could do so by travelling to Scotland. The Appellant stated within a week of Sophia's birth he visited her.
10. The Appellant was advised by Sophia's mother that she had registered her daughter's birth but with her new partner's name as the father. Attempts to amend the birth certificate by agreement proved unsuccessful resulting in the Appellant seeking legal advice although he could not afford the cost of proceedings.
11. Sophia, her mother, and her mother's partner later moved to Nottingham in 2017. The Appellant stated he visited frequently as she was closer to him although by the end of 2017 they moved back to Scotland and Sophia's mother married her new partner. The Appellant states the new husband was very reluctant to allow the Appellant to see his daughter and spend time with her, as a result of which he again contacted a legal representative in Scotland for advice. He contacted Sophia's mother to try and obtain her consent and sometime in 2021 she agreed to put things right as she had divorced her husband. The Appellant began proceedings to amend the birth certificate which resulted in the certificate showing him as the biological father being issued on 28 February 2024.
12. The Appellant has been living with his current partner for the last nine years at an address in Birmingham. His partner is a British national. They have no children of their own and the Appellant states his partner considers Sofia as a daughter of their own and is very supportive and helpful in providing moral and financial support.
13. The Appellant states his daughter is very close to him and he intends to continue his role as a father in her upbringing. He states she is in the formative years of her life and needs his presence for moral and financial support and that if he was allowed to remain in the UK, he will find a job to support his daughter financially.
14. A witness statement from Sophia's mother, dated 9 May 2024, confirms the chronology of events and states the Appellant is very close to Sophia and available to her round the clock. Despite their differences he has always remained in touch with their daughter and helped morally and financially. Now that now their differences have been settled, and in the best interests of Sophia, they have a good relationship. She states that there is no objection to the Appellant seeing Sophia and Sophia spending time with her father and that he visits regularly. The statement supports the Appellant remaining in the UK.
15. There is also a statement from the Appellant's partner Ms Jeevan who confirmed she is a British national who lives in the UK and had done so with the Appellant for the last nine years. She herself is in full-time employment. The statement confirms she views Sophia as her own daughter, that the Appellant is very emotionally close to his daughter and is always prepared to help her. She states she is happy to support him and Sophia and will be more than happy to welcome her into her home. The statement states the Appellant is very close to his

daughter and is fully emotionally attached to her and his presence in the UK is crucial for his daughter who is in the formative years of her life and needs her father around her.

16. In his oral evidence see Appellant confirmed his ongoing commitment, dedication, and contribution to his daughter.

Discussion and analysis

17. As noted above, the only issue at large at this stage of the appeal is whether the decision to refuse the application for leave disproportionately interferes with a protected right recognised by Article 8 ECHR, which includes a right to family life.

18. Section 117A of the Nationality, Immigration Asylum Act 2002 mandates that where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8 ECHR and, as a result will be unlawful under section 6 of the Human Rights Act 1998, in considering the public interest question the court of tribunal must (in particular) have regard to the considerations listed in section 117 B of the Act in a non-deportation case.

19. It is not disputed that the maintenance of effective immigration control is in the public interest.

20. It is accepted that it is in the public interest that a person who seeks to enter or remain in the United Kingdom is able to speak English. The evidence before me shows the Appellant is able to speak English which was not disputed. Indeed, he gave his evidence to the Tribunal in English.

21. I accept it is in the public interest that a person who seeks to enter or remain in the United Kingdom is financially independent. Although the Appellant cannot work at the moment due to his immigration status it is clear that with the support of Ms Jeevan, who is in full-time employment, that he has never been a burden upon the public purse. There is no suggestion that situation is likely to change and if the Appellant is granted status he will be able to seek employment of his own.

22. While section 117B(4) refers to private life, the key issue in this case concerns family life and Sophia. That means the relevant section is section 117B(6) which reads:

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
- (b) it would not be reasonable to expect the child to leave the United Kingdom.

23. The Appellant is not liable to deportation. I am satisfied on the evidence the Appellant has shown he has a genuine and subsisting parental relationship with his daughter Sophia.

24. The definition of a 'qualifying child' is to be found in section 117 D (1) which states a 'qualifying child' means a person who is under the age of 18 years and (a) is a British citizen, or (b) has lived in the United Kingdom for a continuous period of seven years or more.

25. Sophia is a Polish citizen who was born on 20 November 2015 and who has always lived in the UK since that period, which is for over seven years. She is therefore a qualifying child.

26. The issue is therefore whether it be reasonable to expect Sophia to leave the United Kingdom. The child has settled status in the UK equivalent to indefinite

leave to remain. The child has always lived in the UK with her mother. The child attends school in her hometown in Scotland where she will have her peer group and friendship groups and private life. If considering the hypothetical question of whether it is reasonable to Sophia to leave the UK to go live in Pakistan to maintain contact with the Appellant, she has no contact with that country, it is not made out her mother has contact, they do not speak the language, there is no evidence of any understanding of life in that country, and there is simply no evidence to establish that it would be reasonable to expect Sophia to leave the UK to have to live in Pakistan to enable family life with her father to continue to be enjoyed.

27. The Secretary of State's position as set out in skeleton argument of 19 December 2023 and response to directions dated 2 April 2024 is that the Appellant's removal from the UK would not result in unjustifiably harsh consequences. This position was adopted in the absence of evidence in relation to the Appellant's relationship with the child and his previous evidence he does not have any child under 18 years or under on his application form.
28. It is accepted the Appellant did not raise the fact of a British resident child until the hearing on 20 December 2023 which is why it was treated as being a new matter.
29. The issue is not whether there will be undue harsh consequences but whether, on the evidence now available, the requirements of section 117B(6) are satisfied. The reasons for this is that this section sets out the circumstances in which a person who is not the subject of a deportation order will not be required to leave the UK, i.e. that his removal will be disproportionate to the interference it will cause with the relevant protected right, in this case being family life with the qualifying child which could not reasonably be continued elsewhere.
30. On the basis of my finding that the requirements of section 117B(6) are satisfied, I allow the appeal on human rights grounds.

Notice of Decision

31. Appeal allowed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 May 2024

