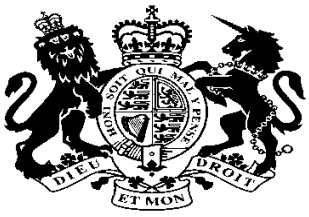

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/11743/2015**

THE IMMIGRATION ACTS

Heard at Field House
On 8 July 2016

Decision and Reasons Promulgated
On 18th July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

H S
(Anonymity Direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Akinbalu (counsel) instructed by Malik & Malik, solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant because this case turns on the welfare of his young child.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Coaster promulgated on 13 April 2016, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on [ ] 1989 and is a national of Afghanistan.

4. The appellant arrived in the UK in February 2013 as a student. On 12 January 2012 he participated in a Tier 4 Pilot interview. On 3 May 2012 his tier 4 visa was revoked, so that leave to remain expired on 19 October 2012. On 1 July 2014 the appellant informed the respondent that he was married to a Latvian national, and they have a child in the UK. The appellant appeared in both the criminal and the family courts in England a number of times throughout 2014 & 2015.

5. On 26 February 2015 the respondent served removal directions. On 27 February 2015 the appellant claimed asylum. On 13 August 2015 the respondent refused the appellant's claim for asylum.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Coaster ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 23 May 2016 Judge Shimmin gave permission to appeal stating inter alia

> " 5. With regard to ground (1) the contact order of HHJ Nathan and the CAFCASS report both address the child's welfare and best interests and contact is now in place. It is arguable that the Judge has made irrational findings about the report's contents which amount to an error of law.
>
> 6. With regard to ground (2) the Judge indicates at paragraph 88 that the need to maintain immigration control outweighs the interests of the appellant to develop a relationship with his daughter. It is arguable that no "weighty reasons" (Azimi – Moayad [2013] UKUT 00197 & LD(Zimbabwe) [2010] UKUT 278) are identified by the Judge thus she has made a misdirection in law.
>
> 7. I grant permission on the above grounds."

The Hearing

7. (a) Ms Akinbalu, counsel for the appellant, moved the grounds of appeal. She told me that the Judge incorrectly placed weight on a Cafcass report, when at pages 25 and 26 of the appellant's bundle there was an order from the family courts for twice-weekly contact with the appellant's daughter. She told me that the decision of the family court, as a matter of law, could only have been made on the basis that contact between the appellant and his daughter is in the child's best interests. She told me that that fundamental finding should have formed the basis of the Judge's decision. She said that if the Judge had taken account of the order from the family court the decision would have been different.

(b) Ms Akinbalu told me that the Judge's findings are inconsistent with an extant order for contact. She then moved the second ground of appeal and told me that the Judge's assessment of article 8 ECHR is flawed. She reminded me that the Judge made clear findings that the appellant's child cannot go to Afghanistan, & said that the Judge did not give weighty reasons to bring the established contact between the appellant & his young child to an end. She referred to the case of PD and Others (Article 8 – conjoined family claims) Sri Lanka [2016] UKUT 00108 (IAC), telling me that the decision there reaffirms the ratio in EV (Philippines) v Secretary of State for the Home Department [2014] EWCA Civ 874 & Azimi – Moayad [2013] UKUT 00197.

(c) Ms Akinbalu told me that this is not "*a pure section 117B(6) case*", but argued that the principles set out there indicate that, as there is a genuine and subsisting relationship between the appellant and his daughter, the public interest is not served by separating father & daughter by removing the appellant. She urged me to set the decision aside and substitute my own decision allowing the appellant's appeal against the respondent's decision.

8. Mr Walker, for the respondent, adopted the terms of the rule 24 note dated 27 June 2016. He told me that the decision does not contain any errors of law material or otherwise. He argued that the Judge carefully considered the best interests of the appellant's child, and reach conclusions which were open to the Judge to reach on the facts as she found them to be. He argued that the grounds of appeal amount to little more than an expression of dissatisfaction with a decision that the appellant does not like. He told me that the arguments advanced for the appellant amount to an attempt to re-litigate this case. He urged me to dismiss the appeal.

Analysis

9. No challenge is taken to the Judge's findings in relation to asylum or humanitarian protection, nor is any challenge taken to the Judges finding in the first sentence of [67] that the appellant is not a credible witness. This appeal is directed entirely at the appellant's appeal on article 8 ECHR grounds.

10. At [74] the Judge found that the appellant cannot fulfil the requirements of paragraph 276ADE of the immigration rules, and that there was insufficient evidence placed before her of the component parts of private life, so that the was no reason to consider article 8 private life out-with the immigration rules. Between [75] and [88] the Judge considered section 55 of the Borders Citizenship and Immigration Act 2009 & the interests of the appellant's child.

11. It is trite law that the best interests of the child drive decisions of the family court. At pages 25 and 26 of the appellant's bundle, there is an order from the family court dated 21 October 2015 granting the appellant supervised contact to his child. It is argued for the appellant that that order is pretty much determinative of this case and should have formed the foundation of the Judge's decision making.

12. The problem with that argument is that the court order dated 21 October 2015 does more than set out the arrangements for interim contact. The order was made on the basis that the appellant's asylum claim was still outstanding and the order calls for a Cafcass report.

13. At [79] the Judge clearly records the arrangements for interim contact sanctioned by the family court on 21 October 2015. The Judge then goes on to consider the Cafcass report which post-dates the interim contact order by almost 3 months and provides the Judge with information that was not before the family court when the interim contact order was made.

14. It is not suggested that the Judge has misinterpreted the contents of the Cafcass report. Between [84] and [86] the Judge sets out careful consideration of the content of the Cafcass report before concluding at [87] that the appellant does not enjoy family life within the meaning of article 8 of the 1950 convention. At [88] the Judge finds that the appellant's removal will not affect the well-being of his young daughter.

15. In LD (Article 8 – best interests of child) Zimbabwe [2010] UKUT 278 (IAC) the Tribunal held (in the context of children who had been lawfully settled in the UK for many years) that the interests of minor children and their welfare are a primary consideration. A failure to treat them as such will violate Article 8(2). Weighty reasons would be required to justify separating a parent from a lawfully settled minor child or child from a community in which he or she had grown up and lived for most of his or her life.

16. In EV (Philippines) and Others v SSHD [2014] EWCA Civ 874 it was held that the best interests of the child were to be determined by reference to the child alone without reference to the immigration history or status of either parent (paras 32 and 33). In then determining whether or not the need for immigration control outweighed the best interests of the children, it was necessary to determine the relative strength of the factors which made it in their best interests to remain in the UK; and also to take account of any factors that pointed the other way.

17. In PD and Others (Article 8 – conjoined family claims) Sri Lanka [2016] UKUT 00108 (IAC) it was held that when considering the conjoined Article 8 ECHR claims of multiple family members, decision-makers should first apply the Immigration Rules to each individual applicant and, if appropriate, then consider Article 8 outside the Rules. This exercise will typically entail the consideration and determination of all claims jointly, so as to ensure that all material facts and considerations are taken into account in each case.

18. A fair reading of this decision makes it abundantly clear that the Judge carefully considers the best interests of the appellant's child between [80] and [88] of the decision. The Judge takes the contents of the Cafcass report as the most up to date and detailed evidence (evidence which was called for in the Family Court order of 21 October 2015) of the extent of contact between the appellant and his daughter, the

quality of that contact, and the impact that cessation of contact now will have on the appellant's daughter.

19. There is no flaw in the Judge's fact finding. The correct test in law is applied. The Judge manifestly placed the interests of the child at the centre of her decision. The conclusion which she reached is well within the range of conclusions reasonably open to her.

20. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

21. There is nothing wrong with the Judge's fact finding exercise. In reality the appellant's appeal amounts to little more than a disagreement with the way the Judge has applied the facts as she found them to be. The appellant might not like the conclusion that the Judge has come to, but that conclusion is the result of the correctly applied legal equation. There is nothing wrong with the Judge's fact finding exercise. The correct test in law has been applied. The decision does not contain a material error of law.

22. The Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

23. No errors of law have been established. The Judge's decision stands.

DECISION

24. The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed Date 14 July 2016

Deputy Upper Tribunal Judge Doyle