



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/14824/2016

THE IMMIGRATION ACTS

Heard at Field House
On 16 August 2018

Decision & Reasons Promulgated
On 30 August 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

OREROMENA [O]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs G Fama, Counsel

For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. This is the hearing of a permission to appeal against the decision of First-tier Tribunal Judge Housego. First-tier Tribunal Judge Housego dismissed the appellant's appeal for reasons set out in a decision promulgated on 17 November 2017. Judge Housego found that the appellant has no contact with either of his children. The appellant sought permission to appeal on the grounds that firstly the judge did not consider properly the impact the removal of the appellant would have on his two children who are presently living in the UK and failed to consider properly the best interests of the

appellant's children in accordance with Section 55 of the Borders, Citizenship and Immigration Act 2009.

2. In paragraph 38 of Judge Housego's decision the judge sets out the responses of the appellant to questions asked of him. In particular the appellant was asked why his sister, with whom his daughter lives, was not there to give evidence and the appellant responded that she had a new job and he had told her to stay back and get the children from school. The judge set out that the appellant's relationship with his second child's mother had ended some nine months ago and that he had no relationship with her but sometimes he sent money to support the children. He referred to the appellant statement that the appellant's family gave him money and the church where he did his music gave him money but that no-one from the church had attended to give evidence in his support because they were all working. The judge referred to photographs that the appellant produced which show the appellant with two different children together with bank statements and the judge then went on from paragraph 48 onwards to make findings. The judge finds that the children are the appellant's children and he is their biological father. In paragraph 50 the judge finds that there is no contact between the appellant and the second child (the youngest child) and he makes a finding that the appellant does not support either child financially. He refers to a family court order in respect of the older child. He makes the incorrect comment that the appellant has no parental rights in respect of the older child because of course as the biological father he does retain parental responsibility albeit it is shared. Then in paragraph 53 the judge says,

"In the absence of any evidence other than oral evidence from the appellant today which is self-serving as he depends on there being a parental relationship to seek Article 8 leave to remain, I find there is no contact between the appellant and [the first child]."

The judge concludes that there is no subsisting parental relationship with either child. The judge considers the best interests of the children and reaches the conclusion that the best interests of the older child are to be with those that the court has ordered she should be with, that there is no contact with the appellant and the best interests of that child are not a strong reason for allowing the appeal as there is no reason to think that the status quo would change.

3. Similarly, in terms of the younger child, the judge finds that the best interests of that child are to be with his mother and as there is no contact with the appellant and no prospect of that changing, his best interests are not a strong reason to allow the appeal. He concludes that because the appellant has no connection with either child, the Article 8 basis of family life with them is not made out.
4. Before me Mrs Fama referred to further proceedings taking place, that the child was outside, that there was now evidence that the appellant had contact with the child. She accepted that there was no evidence, to her knowledge, before the First-tier Tribunal Judge that he was visiting the child but referred to the fact that he says that he has always had a relationship with the child. As I explained to Mrs Fama, the issue is not what the situation is now or what evidence could be produced now, the issue is

whether on the basis of the evidence that was before the First-tier Tribunal Judge that First-tier Tribunal Judge had made a material error of law such that the decision should be set aside.

5. Whereas here the judge has made clear findings that the appellant has no contact with either child, and that finding was not challenged in the application for permission to appeal, the fact that there is no detailed analysis of the best interests of the child in the absence of contact with her father is not a material error of law. I would however point out that the judge did consider where the best interests of the children would be and that was in the UK. either with the carer as ordered by the court or with the birth mother. This finding was predicated upon the finding by the judge that there was no contact with the appellant.
6. Permission was granted by the Deputy Upper Tribunal Judge on two matters that were not specifically pleaded. The Deputy Upper Tribunal Judge granted permission on the basis that it was arguable that the judge failed to take into account the special guardianship support plan made pursuant to a Special Guardianship Order on 6 April 2016. The judge did consider that order; there is reference to that order in paragraph 52 of the judgment. Permission was also granted by deputy Upper Tribunal Judge Chapman on a ground that was not pleaded which was that it was arguable that there was a procedural error. This was not pursued by Mrs Fama, quite properly. First of all the judge very clearly made specific and careful arrangements to ensure that the appellant was aware of the procedure and he was given every opportunity to provide his evidence. Secondly, a procedural error was not pleaded and there is so far as I can see no basis whatsoever for such an issue to be even arguable never mind successful.
7. It is of course open to the appellant to make further submissions with whatever further evidence he has and the Secretary of State will consider those submissions under paragraph 353 of the Immigration Rules. Insofar as this appeal is concerned, there is no material error of law in the decision by the First-tier Tribunal Judge.
8. I do not set aside the decision. The decision of the First-tier Tribunal stands. The appeal is dismissed.

Signed on 21st August 2018

Jane Coker

Upper Tribunal Judge Coker