Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09844/2018

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 2nd September 2019	**On 12th September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

QUDOOS [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel (Counsel)
For the Respondent: Ms H Aboni (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Hawden-Beal, promulgated on 1st April 2019, following a hearing at Birmingham on 27th March 2019. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, and was born on 21st March 1989. He appealed against the decision of the Respondent dated 11th April 2018, refusing his application to remain in the UK on the basis of his human rights, namely, that he has a partner, [AR], and a child.

The Basis of the Refusal

3. The basis of the refusal, as set out in the refusal letter of 11th April 2018, was that although the Appellant had satisfied the suitability requirements of the Rules, he had not satisfied the eligibility requirements of Appendix FM for leave to remain as a partner because he failed to supply documentary evidence to show that he was residing with his partner. Moreover, he also failed to provide evidence to show that they had been cohabiting for a period of least two years prior to the date of the application. Furthermore, he failed to meet the immigration status requirements of the Rules because his visa expired in August 2016 and he thereafter became an overstayer. Finally, it was not accepted that the Appellant had a genuine and subsisting relationship with his son, because the Appellant was not named as the father in the son's birth certificate. Moreover, the Appellant had been subject to a restraining order made in favour of his son which expired in February 2018.

The Appellant's Claim

4. The Appellant continued to insist that the basis of his claim was that he is the parent of a British child and that there are Family Court proceedings pending for the Appellant to establish contact with his child. This meant that to deny him permission to remain in the UK was a disproportionate interference in his family and private life.

The Judge's Finding

5. The judge, in a careful and comprehensive determination, noted the Appellant's evidence given orally before her, that he could not pursue contact proceedings from Pakistan if he was removed there. He also did not know how long how long it would take to conclude the proceedings. He feared that if it took too long this would impact upon the relationship with his child. He had applied to go on a parenting course which was due to start on 14th April 2019. It would last fourteen weeks (see paragraph 7).

6. In the meantime, the Appellant enjoyed indirect contact with his child by virtue of an indirect contact order which was made in December 2018. This it does by sending gifts and money every month. He had been sent pictures by his estranged wife and his family have given him money to buy things for the child. He was told by the court to pay £40 per month. He has been doing that at the end of each month. His last payment was on 28th February 2019. There is no other way of exercising indirect contact with his child. He was waiting for a direct contact order from the court. The judge observed that "he accepts that he has not direct contact at the moment but says

that he is just waiting to do the course and after six months he can make another application to the court for direct contact" (paragraph 7).

7. The judge came to the finding that "the Appellant does not have direct access to his son. He has still never seen him in the flesh and has never spoken to him" (paragraph 26). The judge went on to conclude that "the Appellant cannot even meet EX.1 because there is no genuine and subsisting parental relationship with his son ...." (paragraph 27). The judge concluded that "the Appellant cannot establish that he has any role in his child's life at this moment in time. His contact by consent is indirect. He has not been involved in any aspect of his son's upbringing" (paragraph 28). The judge also applied the five steps set out in **Razgar** (see paragraphs 22 to 25) and concluded that the Appellant had lived in Pakistan for 24 years before he came here, spoke the language of that country, and had family there, such that it would be possible for him to return and continue with his indirect contact arrangements from that country.

8. The appeal was dismissed.

Grounds of Application

9. The grounds of application state that the Appellant had provided a child arrangements order which confirmed that he was a liberty to apply for a further child arrangements order in order to have direct access to his son once he had completed a parenting course. The First-tier Tribunal Judge erred in finding that the Appellant had no prospect of having direct access with his son in the future. That being so, the judge reached an erroneous decision.

10. It was stated that the Appellant's bundle contained a letter from Article 6 law, stating that the Family Court, by order dated 7th December 2018, had already granted the Appellant indirect contact with his son. It was open to the Appellant to make a fresh application for a child arrangements order once the Appellant had demonstrated a degree of commitment to his son by way of a direct contact, and once he had completed a parenting course at Rosehill Children's Centre in Derby.

11. On 13th May 2019 permission to appeal was granted by the Tribunal on the basis that although the judge had referred at paragraph 38 of her decision to the Family Court order, and although she had found that the indirect contact could continue from Pakistan, it was arguable that the judge did not give full consideration to the proportionality of expecting the Appellant to leave the UK when he had already applied to complete the required parental course which could enable to seek direct contact with his child.

Submissions

12. At the hearing before me on 2nd September 2019, Ms Patel, appearing on behalf of the Appellant, submitted that the Appellant had started a parental course now, which would finish in September 2019 (this month). This was not the same fourteen week course which she was going to undertake, as set out in the Family Court order in

December 2018, which was to be at the Rosehill Children's Centre in Derby. It was another much shorter course of eight weeks. Ms Patel submitted that she would have to accept that at the end of the indirect contact order there was still no guarantee that the Appellant would get a direct contact order. Nevertheless, the Appellant had set out to do his very best in terms of showing his commitment to his child. The judge's failure to take it in into account was disproportionate.

13. For her part, Ms Aboni submitted that there was no error of law in the judge's determination. She had given adequate reasons for coming to the conclusion that the appeal could not succeed. All that the Appellant had at present was indirect contact and this could continue from Pakistan. The Family Court had in mind the fact that the Appellant had an impending immigration court hearing, which may result in the Appellant not being given leave to remain in this country, and this would then have an adverse impact on the child.

14. She referred me to a letter in the Appellant's bundle (at page 6) written by Article 6 law, to the effect that "indirect contact was offered for six months but this was not put in the order as the magistrates felt that if Mr Qudoos was removed from the UK, they did not want to limit the indirect contact to six months only (sic)".

15. Secondly, and more importantly, submitted Ms Aboni, what the Family Court order back in December 2018 had said was that "the applicant father has enrolled himself onto a parenting course which is to commence in January 2019 at the Rosehill Children's Centre, Derby". The Appellant, however, had done no such thing. He had not actually commenced the course in January 2019 at all. That was a 14- week course. He not been able to undertake that. He had now started an eight week course which was to finish in September, and was still not completed. Third, in those circumstances, one could simply not say that there was a real prospect of direct contact being given to the Appellant to see his child.

16. In reply, Ms Patel submitted that if the Appellant was required to persist with indirect contact arrangements from Pakistan, the resulting delay in his applying for entry clearance from that country would be detrimental to the best interests of the child. Second, the judge had erred in law by referring (at paragraph 24) to whether the decision was justified "when it was made in April 2018", given that in a human rights appeal such a this, the position has to be looked at as of now.

No Error of Law

17. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2017) such that I should set aside the decision. My reasons are as follows. First, Ms Aboni is entirely correct in saying that the Family Court order in December 2018 was predicated on the Appellant enrolling himself "onto a parenting course which is to commence in January 2019 at Rosehill Children's Centre, Derby". The Appellant did not enrol himself and commenced that course on that occasion. Instead, he has waited no less than six months before starting an eight week course which will finish at the end of September this month.

18. Second, the Family Court order was clear that "the father's application for parental responsibility is dismissed".

19. Third, the Family Court had made it quite clear that "whether the father has leave to remain in the UK" was "one of the factors that will have a bearing on the question of parental responsibility".

20. Fourth, these were matters that the judge properly took into account at the time of her decision.

21. Finally, the judge was absolutely clear in being focused upon "his son's best interests" and observed that:

> "The Family Court did not order direct contact with the child in December 2018. The CAFCASS officer clearly wanted a degree of commitment from the Appellant and for him to undertake a parenting course before any direct contact would be considered and that would only be considered if a fresh application was made and there were no safeguarding concerns".

22. At the time of the appeal before the judge below the Appellant had not completed a parenting course. There had not been the required "degree of commitment from the Appellant" which it was necessary for him to show. Indeed, the judge ended by observing that "it is telling that this was a final order and not an interim order such that direct contact would automatically follow after a period of indirect contact as has been my experience of such orders in the past.

23. This indicates to me that there was a question mark over the Appellant's commitment and there were safeguarding concerns at the time the order was made such that only indirect contact was ordered" (paragraph 37). In the circumstances, the judge did not act disproportionately in concluding that the Appellant was well-able to continue with indirect contact arrangements from Pakistan. It is a feature of this appeal that, as the judge made clear, this is a father who has had no direct contact with his child ever at all, never having seen him in the flesh, and never even having spoken to him (paragraph 26).

Notice of Decision

24. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand.

25. No anonymity direction is made.

26. This appeal is dismissed.

Signed Date

Deputy Upper Tribunal Judge Juss 10th September 2019