IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002173
First-tier Tribunal No:
HU/54543/2021
LH/00911/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 September 2024

Before

UPPER TRIBUNAL JUDGE MEAH

Between

IBRAHIM JALLOH
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Litigant in person
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 19 September 2024

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge MM Thomas promulgated on 12 April 2024 ("the decision"). I shall hereon in refer to the parties as they were in the First-tier Tribunal for ease of understanding and to avoid confusion.

2. By the decision, the First-tier Tribunal allowed the appellant's human rights appeal based on his family life with his daughter, against the respondent's decision dated 29 July 2021, refusing his human rights application that was made initially to remain in the on the basis of his relationship to his now former partner and mother of his child. The application was refused on Eligibility grounds as the appellant was an overstayer at the time of his application.

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3. By the time the appellant's appeal reached the hearing stage before the First-tier Tribunal his claim to remain was essentially confined to wanting to remain in the UK on the grounds of his claimed parental relationship and the direct access he had with his daughter who is a qualifying child for the purposes of section 117B of the Nationality, Immigration and Asylum Act 2002. There was no dispute on this issue.

<u>The Grounds</u>

4. The respondent's grounds of appeal to the First-tier Tribunal were as follows:

> "Making a material misdirection in law
>
> Ground One
>
> It is respectfully submitted, that in allowing the appeal on the basis of article 8, FTTJ Thomas errs in that they appear to utilise the provision as a general dispensing power. Having found the appellant to have no "active role" in his daughters life for the purposes of the Immigration Rules [26-28 & 30-31], it is unclear how the relationship can be said to reach the required standard to demonstrate a parental one, rather than simply a biological one under Article 8.
>
> Section 117B(6) reads :
> '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'.
>
> It is respectfully asserted that the appellant has not demonstrated a relationship which can be said to satisfy Section 117B(6) (a), he has limited involvement with his daughter as held by the FTTJ, it is therefore unclear how the minimal contact shown (an apparently recent but undated photograph, and two payments in an agreed schedule that has now been broken) since the end of his relationship with the child's mother, can be held to show a parental relationship which subsists. It is respectfully submitted, that despite the finding that there was an historic family unit [47], prior to the end of the appellants marriage to the child's mother, there is little evidence which is indicative of any committed parental involvement at the time of the hearing, as such to find the appellants limited current contact in her life to demonstrate a parental bond which goes beyond the biological [39], and therefore sufficient to trump the public interest, must be materially misdirected in law.
>
> Making perverse or irrational findings on a matter
>
> Ground Two
>
> The appellant is found to have no active role in his daughters life [31], to have failed to keep up with the required payment schedule [26], and to have exaggerated his involvement in her life for the purposes of the appeal [27]. The IJ further indicates that none of

the photographic evidence is dated, and as such to simply accept the appellants word as to when he last had contact with her, and conclude therefore that the relationship subsists, is bordering on the perverse, particularly when considered against the fact her mother failed to attend the hearing to support the appellants case [30],meaning that there is no independent current evidence of the appellants relationship with his daughter.(and when in fact her absence could be indicative of a lack of relationship). It is respectfully submitted, that when looked at holistically, the evidence points to another potentially opportunistic claim, and to find otherwise without more, whilst apparently ignoring the appellants history of applications [2,4 &22] and propensity to manipulate the truth appears irrational in the face of the evidence. It is therefore respectfully submitted, that the conclusion is flawed by the failure to properly weigh the evidence and has resulted in material misdirection in law.

Permission to appeal on the above grounds is respectfully sought.

An oral hearing is requested."

5. Permission to appeal was refused by First-tier Tribunal Judge Gumsley on 03 May 2024, in the following terms:

"1. The application for permission to appeal has been made in time. It is made by the Respondent.
2. There are two grounds advanced.
3. Ground One asserts that the FtT Judge made a material misdirection in law. Ground Two asserts that the FtT Judge's findings were perverse.
4. I am not satisfied that, even though the FtT Judge found that the Appellant was not playing an 'active role' in his child's life, it is arguable the FtT Judge erred in concluding that there was a parental relationship as referenced in s.117(6). The FtT Judge set out the legal position, and provided detailed analysis of the evidence along with adequate reasons for the findings made and conclusions reached in this respect. As to perversity, I am not satisfied that it is arguable that the FtT Judge acted irrationally or the decision made was perverse. A FtT Judge is perfectly entitled to accept the evidence of an Appellant without there being other support for it (dates on photographs) or from other witnesses even if they do not attend the hearing (in fact the FtT Judge said he attached little weight to the evidence of the child's mother in any event). What weight to attach to evidence is usually for the FtT Judge to decide. The FtT Judge is also entitled to accept some evidence whilst rejecting other evidence. It is clear that the FtT Judge considered this matters with care and came to a conclusion which was within the boundaries of ones reasonably available to them
5. Consequently permission to appeal is refused on both grounds."

6. Permission to appeal was renewed to the Upper Tribunal on 08 May 2024, as follows:

"Making a material misdirection in law/ Lack of adequate reasons

Ground One

> It is respectfully submitted, that in refusing permission, FTTJ Gumsley errs in that they fail to fully engage with the grounds of appeal before them. It is asserted, that they have failed to consider whether the relationship can properly be described as parental as required under 117b, nor whether in fact the evidence referred to in the perversity challenge is indicative of the opposite position being true, and whilst the appellant has potentially had recent contact with his daughter, can this be said to demonstrate, in light of the opposing evidence referred to, anything other than brief contact rather than a father and daughter relationship capable of satisfying the rules or any requirements under Article 8.
>
> Permission is therefore sought both on the above, and to renew the initial grounds in their entirety before the Upper-tier…"

7. Permission was granted by Deputy Upper Tribunal Judge Saffer on 22 May 2024 as follows:

> "It is arguable as asserted in the grounds that the Judge may have materially erred in law in relation to the nature of the relationship with his child having found he had no active role in his child's life. All grounds may be argued…"

8. The Upper Tribunal received a document entitled Rule 24 response from the appellant comprising 96 pages. This appeared to be more of an attempt to restate his case with additional evidence, rather than it being a proper response to the respondent's grounds. I nonetheless take note that the appellant is a litigant in person (as he was when his appeal was heard in the First-tier Tribunal), which is the likely explanation for his misunderstanding the Rule 24 process, although he has, in fairness, attempted also to respond directly to some of the respondent's grounds.

9. That is the basis on which this appeal came before the Upper Tribunal.

Documents

10. I had before me a composite bundle containing all necessary documents including those cited above. This also included the bundles relied upon by the parties in the First-tier Tribunal.

Hearing and Submissions

11. As the appellant was a litigant in person I took time at the outset to explain the process to him including the way in which the error of law hearing would proceed. He confirmed he had understood and I also guided him through the hearing. Both Ms Cunha and the appellant made submissions which I have taken into account and these are set out in the Record of Proceedings.

Discussion and Analysis

12. The renewed grounds relied upon the original grounds made to the First-tier Tribunal. During preliminary discussions Ms Cunha conceded the first ground in acknowledging that it was weak in the light of the distinction between taking an active role in the child's life with direct access, compared to that which is

envisaged under section 117B(6) in terms of assessment of a genuine and subsisting parental relationship. In so doing, Ms Cunha referred to the Upper Tribunal decision in **R (on the application of RK) v SSHD (s.117B(6); "parental relationship") IJR [2016] UKUT 31**, as did the First-tier Tribunal in self-directing at [45] of the decision.

13. I referred Ms Cunha to the reported Upper Tribunal case of **SR (subsisting parental relationship - s117B(6)) Pakistan [2018] UKUT 334 (IAC)**, where the following is stated in headnote 1;

> *"1. If a parent ('P') is unable to demonstrate he / she has been taking an active role in a child's upbringing for the purposes of E-LTRPT.2.4 of the Immigration Rules, P may still be able to demonstrate a genuine and subsisting parental relationship with a qualifying child for the purposes of section 117B(6) of the Nationality Immigration and Asylum Act 2002 ('the 2002 Act'). The determination of both matters turns on the particular facts of the case…"*

14. I accordingly find that the concession on the first ground by Ms Cunha was properly and sensibly made, as even though the First-tier Tribunal omitted to cite **SR Pakistan** in its decision, despite it arguably being the most relevant and analogous to this appellant's case, it did nonetheless correctly self-direct referring to other authorities and by making a clear distinction between its assessment of the appellant's case under the Immigration Rules where he did not succeed, in contrast to his case under Article 8 ECHR which the First-tier Tribunal considered from [37]-[52], upon which the appellant was successful.

15. Turning now to the second ground made to the First-tier Tribunal and relied upon in the renewed grounds to the Upper Tribunal, I find that this is no more than disagreement with the conclusion reached in the appellant's appeal. The First-tier Tribunal referred correctly to relevant trite authorities in it assessment of the appellant's case under Article 8 ECHR which encompassed also the 'best interests' consideration under section 55 of the Borders Citizenship and Immigration Act 2009, in relation to the appellant's child. This is set out at [39], [40], [42], [45] and [50].

16. In her submissions Ms Cunha pointed to [46] of the First-tier Tribunal's decision stating that this appeared to read as though the assessment carried out was one which factored in speculation about what might happen in the future rather than focussing on what the position was at the date of hearing. This was in the light of the First-tier Tribunal's comments;

> "I find what he states in regard the love he has for her and his desire to be part of her life going forward to be genuine.."

17. I surmise the issue was with the use of the words *'going-forward'*. However, I do not accept this to be as problematic as is being suggested, as this sentence, and indeed the entire paragraph, needs to be read in context alongside the other findings under all the other paragraphs under the Article 8 ECHR heading of the decision, which I find, nonetheless, demonstrates the assessment was very much on the present circumstances and pertaining to those the First-tier Tribunal was confronted with on the date the matter came before it.

18. It must also be noted that after self-directing the Tribunal undertook a full and careful assessment of the appellant's case under this heading concluding at [49] that:

> "In summary, although I have made negative credibility findings in regard to the Appellant and what he stated as to the active input that he has in KJ's upbringing and decisions pertaining to her, the one aspect of his evidence which I have found credible is that pertaining to his relationship with KJ and what is best for her. In that respect, I have found his evidence compelling and find that there is and has always been a genuine and subsisting parental relationship."

19. Consequently, I do not find when reading the decision as a whole, that the First-tier Tribunal failed to consider any of the evidence with the required degree of anxious scrutiny. The First-tier Tribunal gave detailed reasons, with specific reference to the evidence and a proper contextual reading of the decision shows that, having assessed the evidence, it concluded as stated in the decision making sustainable findings on the relevant issues arising. The reason the appeal was allowed was that the weight given to the evidence enabled the appellant to succeed. The requirement is for reasons to be legally adequate, not perfect. A reader of the decision must be able to understand why the Judge came to the conclusion set out in the decision. Whilst the respondent may disagree with the First-tier Tribunal's decision, I find in light of the issues set out above, and in the relevant parts of the appellant's document entitled Rule 24 response, that the respondent has failed to establish arguable legal error material to the decision to allow the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter. No material legal error is made out.

Notice of Decision

20. The respondent's appeal is dismissed.

21. The decision by the First-tier Tribunal allowing the appellant's appeal shall stand.

S Meah
Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 September 2024