



IAC-AH-LEM-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/02552/2015

THE IMMIGRATION ACTS

Heard at Bradford

On 12 January 2016

**Decision &
Promulgated**

On 10 March 2016

Reasons

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**FAIZ NAEEM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Dawes, instructed by Kabir Ahmed & Co Solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant Faiz Naeem, was born on 16 February 1989 and is a male citizen of Pakistan. He is the former husband of Taira Bibi Rashid (hereafter "Mrs Rashid") and the father of M who was born in September 2013. The appellant entered the United Kingdom as a student in 2010,

leave to remain which was extended until 27 October 2014. Prior to the expiry of that leave the appellant made an application to remain in the United Kingdom in order to have access with his son who is a British citizen living in the United Kingdom with his British mother. That application was refused by the respondent on 29 December 2014 and a decision also made to remove the appellant by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The appellant appealed against that decision to the First-tier Tribunal (Judge Shimmin) which, in a decision promulgated on 2 April 2015 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are five grounds of appeal. First, the appellant asserts that there is an insufficiency of reasoning on the part of the judge who erred by “going against overwhelming supporting documentary evidence which corroborated the fact that the appellant was clearly involved in his child’s life ...”. The grounds cite a number of photographs which were before the Tribunal.
3. The ground has no merit. Photographic evidence is often problematic given that the judge is unable to be sure to the appropriate standard of proof that all those individuals shown in the photographs are the same individuals with which the appeal may be concerned. In any event, the ground is nothing more than a disagreement with findings which were open to the judge on the evidence. I agree with the Rule 24 of the respondent [4] that the judge “must be allowed to critically evaluate the evidence before him (*sic*).”
4. The second ground of appeal asserts that the judge applied an inappropriate standard of proof. It is also submitted that the judge asked unwarranted questions of the appellant who gave evidence before him.
5. The refusal letter of the respondent indicates that she was not satisfied that the appellant met the requirements of the particular Immigration Rule, E - LTRPT 2.4. The rule provides that the appellant must have access rights to a child and must “provide evidence that they are taking and intend to continue to take, an active role in the child’s upbringing”. No details are provided of that rejection in the refusal letter but the judge clearly took the view that letters signed by the child’s mother Mrs Rashid and which had been drafted for her to sign either by the appellant or his own solicitors should be treated with some caution. I see no error of law in that approach at all. The judge rightly observes [30] that an appellant does not necessarily need to show that he or she has a court order providing for access; Section 1 of the Children Act 1989 (the so-called “no order principle”) and applied in contact applications before the county court often leads to settlement by agreement rather than by the making of a court order. However, the judge was fully entitled, in the absence of any oral evidence from the mother or written evidence which he could be satisfied accurately represented her views, to find that the appellant had failed to prove that he had access rights. There was no suggestion that he

applied an inappropriate level of proof in reaching that conclusion. In any event, the appellant not only had to prove that he had access rights but that he was taking and intended to continue to take an active role in the child's upbringing. Even adopting a generous approach towards the appellant's somewhat unsatisfactory evidence of the existence of access rights, it is difficult to see how the Tribunal might have concluded on the evidence that the second limb of the Immigration Rule could be satisfied.

6. The third ground is also without merit. There is nothing to suggest that the judge ignored the submissions of Counsel, an assertion which is little more than an expression of discontent on the part of the appellant with the outcome of the appeal. There was also no obligation on the Home Office to verify the authenticity of Mrs Rashid's letters; it was for the appellant to produce clear and cogent evidence with a view to discharging the burden of proof before the Tribunal.
7. Ground 4 is without merit. The appellant merely asserts the respondent had not taken issue with the identity of the child shown in the photographs. It may well be the correct to say that the respondent did not descent to particulars at all in concluding that the appellant had failed to produce evidence to satisfy the Immigration Rules. The finding regarding the photographs was, as I have noted above, open to the judge.
8. The final ground of appeal concerns Article 8 ECHR. The ground is without merit. It was suggested that the judge failed to follow the well-known test in *Razgar* [2004] UKHL 27. There was no need for him to do so given that he was not satisfied (and had given cogent reasons for reaching that conclusion) that any relationship existed between the appellant and the son. Article 8 was, therefore, not engaged.
9. In the circumstances, this appeal is dismissed.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 20 February 2016

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 20 February 2016

Upper Tribunal Judge Clive Lane