Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/11618/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16 January 2019	**On 08 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MR SULEYMAN KARAKAS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Collins of counsel
For the Respondent: Mr Bates, a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant appeals to the Upper Tribunal following the grant of permission on a renewal application by Upper Tribunal Judge Chalkley on 3 December 2018. That followed a refusal of permission to appeal by First-tier Tribunal Judge Parkes on 12 October 2018.

2. The background to this appeal is that the appellant arrived in the UK in 2006 and was given leave to remain as the partner of one [Miss CK] to September 2016. Various applications were made to extend his leave.

Unfortunately, the respondent decided that he had used forged documents in relation to one of those applications and concluded that he did not qualify for leave to remain under the Immigration Rules.

3. The current application was made, it would seem, in September 2016. On 19 September 2017 the appellant was refused leave to remain based on his private or family life in the UK under Article 8 of the European Convention on Human Rights (ECHR). In summary, having found that the appellant did not qualify under any of the Immigration Rules which were relevant to his case, the responondent went on to consider whether the appellant had a genuine and subsisting relationship with either of the stepchildren with whom he lived ([Ut] and [Ur]) and whether in those circumstances he qualified as having established a family life in the UK. The respondent then considered whether it would be unlawful to interfere with that family life by returning the appellant to Turkey.

4. The respondent accepted that the appellant had a relationship with [Ur], who was born on 26 June 2003 and is therefore aged 15, and [Ut], who was born on the 23 January 2001. However, he was unable to establish a parental relationship or that he had such degree of contact as would establish that he had a qualifying relationship with [Ur] within Article 8. Furthermore, it was not accepted the appellant qualified under the Immigration Rules and specifically paragraph 276ADE(1)(vi) of the Immigration Rules, either. There were no very significant obstacles to his re-integration into Turkey if he was required to go there. He was over the age of 18 and had spent less than twenty years living in the UK, indeed, most of his life had been spent in Turkey, where he had very strong social and cultural ties. Obviously, he was able to speak the Turkish language and would be able to return there, where he could continue to maintain contact with his stepchildren if he so desired. The respondent also considered his own obligation to consider the welfare of [Ur], who at the date of the decision was still under 18, pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009.

5. At the hearing of the appeal against the respondent's decision, which came before, Judge of the First-tier Tribunal A. M. S. Green (the Immigration Judge), the appellant was represented by Mr Collins. An initial application for an adjournment was rejected by the Immigration Judge. Although he does not refer to this in his decision, I have considered his notes of hearing, which suggest that because the appellant's stepchildren had not attended the Tribunal to give evidence, he drew an adverse inference from their non-attendance. This was the choice of the appellant or his representatives. He considered it to be in the interests of justice to proceed with the hearing in the absence of those children. Based on what Mr Collins told me at the hearing in the Upper Tribunal, the application for an adjournment was only made on the morning of the hearing without any prior notification being given that it would be made to the respondent or the Tribunal. The Immigration Judge therefore decided it was appropriate to proceed with the hearing without granting an adjournment.

6. The Immigration Judge went on to hear evidence from the appellant's partner and submissions by both representatives, but he held that the appellant was ineligible to apply under the Immigration Rules having considered those Rules. He inferred that the reason that the children have not been present at the hearing must have reflected on their lack of proper relationship with their stepfather. No written statements had been provided for those children, which was a choice of the appellant or his representatives. He considered the appellant's assertions as to his degree of contact with his step children, including [Ur], but noted that the appellant was asked during his evidence whether he had any documentary evidence of his relationship with those stepchildren, other than the photographs which were in the appellant's bundle. He said that he had chosen the photographs from a variety he had, and the photographs were taken at home at weekends and would be a memento for him. He was unsure how often the children saw their biological father. He was asked if he had any other documentary evidence that he wished to produce, but he was unable to produce any.

7. His partner Miss [K] gave evidence and said that the appellant was unemployed. He saw the children three or four times a week. Miss [K] said the appellant never parents' evenings at Highbury Grove. She usually goes with her ex-partner. He was not listed as an emergency contact at the school. Miss [K] made the important decisions concerning the children with her ex-partner. She sometimes asked the appellant his opinion. She said that her children were not made "like small babies"; they had their natural father on the scene. The Immigration Judge that the appellant did not have a parental relationship with his stepchildren for the purposes of the Immigration Rules. Given the limited nature of the relationship established, the appellant could return to Turkey and maintain contact with the children by whatever modern means were available to him there.

8. The Immigration Judge considered Section 117B of the 2002 Nationality, Immigration and Asylum Act 2002 (2002 Act) generally and specifically section 117B (6). He concluded that the respondent's decision would not require any of the children to leave the UK. Accordingly, the Immigration Judge decided to dismiss the appeal on human rights grounds. There was no substantive appeal under the Immigration Rules, as this case post-dated the introduction of the Immigration Act 2014.

The Upper Tribunal appeal

9. The grant of permission by Judge Chalkley merely states that the Immigration Judge had arguably erred in placing too much emphasis on the absence of the appellant's children from the hearing. Permission was therefore granted, and all grounds could be argued. Judge Chalkley made the point that he had no criticism of the Immigration Judge 's decision to refuse an adjournment.

10. Dealing with the last-mentioned ground of appeal first, I am satisfied that the Immigration Judge was required to have regard to the overriding objective in determining cases fairly and justly. This required him to consider the time that cases took to come to hearing. Normally only appropriate to grant an adjournment where it is necessary and in the interests of justice. An oral application for an adjournment was made before the Immigration Judge on the day of the hearing. It was clear from the submissions for the Upper Tribunal that that adjournment was that Mr Collins reached a different view of the importance of the oral evidence of the children than his predecessors. The same solicitors who instructed Mr Collins then, also instructed Mr Collins before the Upper Tribunal. one assumes there is no conflict between the appellant and his current solicitors and therefore one assumes that the appellant continues to have confidence in his solicitors. In any event it was perfectly within the Immigration Judge's case management powers to refuse the adjournment and proceed with the hearing. The case had been listed for a substantive hearing as long ago as 9 November 2017 and it finally came on for hearing before the Immigration Judge on 19 July 2018. The hearing date had been in the diary from November 2017 until July 2018 and it was too late to apply to adjourn the appeal without there being a good reason. Furthermore, I am not persuaded that it is necessarily appropriate to hear oral evidence from a 15 and 17-year-old children. Letters in support might have been perfectly sufficient.

11. Secondly, the Immigration Judge was entitled to draw an adverse inference from the fact that the children had not provided written evidence in support of their stepfather's claim. The Immigration Judge gave a careful decision in which he reviewed all the evidence. The fact that the appellant was not listed as an emergency contact by the school was a factor that the judge was entitled to take into account when considering whether he had established a parental relationship with his children.

12. Before the Upper Tribunal I heard argument by both parties. They agreed that the case of **Ortega [2018] UKUT 298 (IAC)** is relevant. Where children had a father caring role and a stepfather also in place, in relation to children whose welfare is being considered:

> "… if a non-biological parent ("third party") caring for a child claims to be a step-parent, the existence of such a relationship will depend upon all the circumstances including whether or not there are others (usually the biologically parents) who have such a relationship with the child also. It is unlikely that a person will be able to establish they have taken on the role of a parent when the biological parents continue to be involved in the child's life as the child's parents."

13. Mr Collins submitted that the Immigration Judge had failed to make proper findings in relation to the presence or nature of the relationship between the appellant and his stepchildren. He was more important to them than the biological father, he said. This had to be properly investigated, preferably by remitting the case to the First-tier Tribunal for a *de novo*

hearing. He submitted that the Immigration Judge had been wrong to decide that the appellant had a limited role. Whilst the biological father might have been the "primary carer" for the appellant's step children, it was the case that the appellant had an almost equal role in the child's upbringing.

14. Mr Bates on the other hand relied on **Ortega** and said that the Immigration Judge set out very clearly in his decision why he did not find the appellant to be in a parental role to his step-children. He referred me to several passages in the decision and he submitted that the appellant had infrequent contact with those children. The biological father was the primary parental figure in their lives. The Immigration Judge's decision was therefore well within his discretion.

Conclusions

15. I agree with Mr Bates' submissions. I have concluded that the main parent in [Ur] and [Ut]'s lives was their natural father. The Immigration Judge set out in detail the arguments presented before him by both sides. He reached an adverse view as to the appellant's credibility. He was entitled to take account of the appellant's failure to produce a letter from the children to confirm they had any significant relationship with the father, that was something that could have been dealt with reasonably easily by the appellant's representatives without the need for oral evidence.

Decision

16. Given the adverse inferences and the clear fact-findings, this was a decision the Immigration Judge was entitled to come to on the evidence and I can find no basis for interfering with that decision.

17. The appeal to the Upper Tribunal by the appellant is dismissed and the decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed Date 7 February 2019

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

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

Signed Date 7 February 2019

Deputy Upper Tribunal Judge Hanbury