



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

Appeal Number: HU/19695/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On Thursday 8 August 2019**

**Decision & Reasons Promulgated  
On Thursday 15 August 2019**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**VM  
[Anonymity direction made]**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr N Ahmed, legal representative

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction was made by the First-tier Tribunal Judge. I continue the anonymity direction because the case involves minor children. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent.

## **DECISION AND REASONS**

### **BACKGROUND**

1. The Appellant appeals against a decision of First-Tier Tribunal Judge G A Black promulgated on 18 April 2019 (“the Decision”) dismissing the Appellant’s appeal against the Secretary of State’s decision dated 12 September 2018 refusing his human rights claim. The Appellant asserts that removal will breach his Article 8 rights based on his relationship with two of the children of his brother who was tragically murdered. Those children live in the UK with their mother. All are British citizens.
2. The Appellant is a national of Albania. He came to the UK as a visitor on 15 January 2016. He was granted further leave to remain in order to give evidence at the criminal trial into his brother’s murder and then to administer his brother’s estate as next of kin.
3. As I have already noted, the Appellant now seeks to remain based on his relationship with his brother’s children, [AG] who is aged seven years and [AI] who is aged five years. He asserts that he is entitled to remain as he has a genuine and subsisting parental relationship with British citizen children and that therefore he meets the criteria in Appendix FM to the Immigration Rules.
4. Judge Black did not accept that the relationship which the Appellant enjoys with the two children amounts to a parental relationship for reasons which I will come to in due course. She also did not accept that the private and family life of the Appellant was sufficient to engage Article 8 ECHR.
5. The Appellant challenges only the finding that he does not have a parental relationship with the children. The sole ground is on that basis that the Judge has failed adequately to explain the finding and/or failed to take into account relevant case-law. The Appellant relies in particular on guidance issued by the Respondent as to the meaning of a parental relationship and the case of R (oao RK) v Secretary of State for the Home Department (s.117B (6); “parental relationship”) IJR [2016] UKUT 00031 (IAC) (“RK”).
6. Permission to appeal was refused by First-tier Tribunal Judge Robertson on 30 May 2019 in the following terms so far as relevant:

“... 2. The grounds lack arguable merit because: in the absence of any evidence to establish that the factors as set out at paras 4-6 of the grounds applied, which included a lack of evidence from the mothers of the Appellant’s nephew and niece, it was open to the Judge to find at [8] that “there was no evidence to show that the appellant had established a relationship with his niece and nephew akin to a parental relationship”. On the evidence before her, it was

open to the Judge to find that the relationships between the Appellant and his nephew and niece fell short of establishing a parental relationship but did establish a family relationship and she gave adequate reasons for her decision at [8-9].

3. The grounds are no more than a disagreement with the findings of the Judge, which were open to her on the evidence before her and which are not unreasonable. As the grounds lack arguable merit, permission to appeal is refused.”

7. The Appellant renewed his application for permission to appeal and permission was granted by Upper Tribunal Judge Dr H H Storey on 5 July 2019 in the following terms:

“The appellant was given limited leave to be in the UK -extended until 7 March 2018 - so that he was able to give evidence at a trial and otherwise to carry out his duties as next of kin for his deceased brother. He said that during this time he developed close relationships with his children. On that basis he applied for further leave to remain on human rights grounds. Whilst accepting that the appellant had close ties with his nephew and niece and a genuine and meaningful relationship with them the judge did not consider that his relationship with them had been shown to be a parental one. Given that on the appellant’s evidence the children, having lost their father, now treat him as a father figure, it is arguable that the judge’s assessment at para 8 was unduly dismissive (therein he said that there was ‘no evidence’ to show there was a relationship akin to a parental relationship, even though was the evidence of the appellant and of one supporting witness).”

8. The matter comes before me to decide whether the Decision does contain any error of law and, if I so conclude, either to re-make the decision or remit the appeal to the First-tier Tribunal for re-making.

## **DISCUSSION AND CONCLUSION**

9. The paragraphs of the Decision dealing with the Appellant’s relationship with the two children are as follows:

“[8] Having considered all of the evidence in the round, I conclude that the appellant has failed to establish his human rights claim within or outside of the Rules under Article 8 ECHR. I find no evidence to show that the appellant has established a relationship with his niece and nephew akin to a parental relationship. I find that he visits them and takes them out on trips and I find that this is a genuine and meaningful relationship as between family members. I accept that the relationships are important to him as a means of maintaining a connection with his deceased brother, who was tragically killed. There was no evidence (either oral or written) from either of the children’s mothers in support or as to the nature and significance of his relationship with the children. It was the appellant’s evidence that he had relationships with all three children but primarily with the two children of MM. I find that there was no evidence at all to support the appellant’s claim that he had a

relationship with the third child from a different mother, and indeed the appellant made no specific mention of that child at all.

[9] I conclude that the appellant would be able to maintain contact with the children by way of visits and through social media. There was no evidence to indicate that any lack of contact with the appellant would cause harm to the child or that this was not in their best interests. Their mother had not produced any letter or witness statement in support and was not at the hearing because she had gone on holiday with the children to Albania. It is clear having regard to that evidence that the mother and children visit Albania from time to time and so the appellant would have the opportunity to see the children when they visited."

10. Part of the Appellant's challenge is based on an asserted failure by the Judge to have regard to relevant case-law. The grounds rely on the Respondent's guidance and the guidance given in RK. I begin by observing that neither guidance was apparently drawn to the attention of the Judge. It is not contained in the Appellant's bundle. There is no skeleton argument on file, but the Appellant was represented at the hearing by Counsel and there is no record of any submission being made based on either set of guidance. I consider that guidance nonetheless.
11. The grounds do not provide details of the Respondent's guidance relied upon, but the extract cited in the grounds appears to be taken from a previous version of what is now "Appendix FM 1.0a: Family Life (as a Partner or Parent): 5-year routes and exceptional circumstances for 10 year routes". That has recently been amended (on 25 July 2019) and it appears that the extract cited is that taken from that cited at [35] of RK. The decision in RK was promulgated in 2016 and it is far from clear that this is the version current when the grounds were pleaded, and the Decision made. I will however assume for current purposes that it is.
12. I do not need to set out the extract given the extensive citation in the grounds (as also appears at [35] of RK). In short summary, the point is made that a person having a relationship as parent of a child is not confined to a person who is the biological parent or to a person legally recognised as a parent. Various factors are set out enabling the Respondent's caseworkers to consider the facts of individual cases, thereby making the point that the issue is highly fact sensitive. The guidance as cited ends by saying that "[o]ther people who spend time with, or reside with the child in addition to their parents, such as their grandparent, aunt or uncle or other family member, or a close friend of the family would not generally be considered to have a parental relationship with the child for the purpose of this guidance."
13. Turning then to the case of RK, the headnote reads as follows (so far as relevant):

“1. It is not necessary for an individual to have ‘parental responsibility’ in law for there to exist a parental relationship.

2. Whether a person who is not a biological parent is in a ‘parental relationship’ with a child for the purposes of s.117B(6) of the Nationality, Immigration and Asylum Act 2002 depends on the individual circumstances and whether the role that individual plays establishes he or she has ‘stepped into the shoes’ of a parent..”

14. RK was a case concerning a grandmother who relied on the relationship with her grandchildren in order to remain in the UK in circumstances where the children were living with her but also with both parents. As such, much of the discussion and the final paragraph of the headnote are concerned with whether another person can have a parental relationship where both parents are involved in a child’s upbringing. However, what is said at paragraphs [42] and [43] is more generally relevant to the issue before me:

“[42]Whether a person is in a ‘parental relationship’ with a child must, necessarily, depend on the individual circumstances. Those circumstances will include what role they actually play in caring for and making decisions in relation to the child. That is likely to be a most significant factor. However, it will also include whether that relationship arises because of their legal obligations as a parent or in lieu of a parent under a court order or other legal obligation. I accept that it is not necessary for an individual to have ‘parental responsibility’ in law for there to exist a ‘parental relationship’, although whether or not that is the case is a relevant factor. What is important is that the individual can establish that they have taken on the role that a ‘parent’ usually plays.

[43] I agree with Mr Mandalia’s formulation that, in effect, an individual must ‘step into the shoes of a parent’ in order to establish a ‘parental relationship’. If the role they play, whether as a relative or friend of the family, is as a caring relative or friend but not so as to take on the role of a parent then it cannot be said that they have a ‘parental relationship’ with the child. It is perhaps obvious to state that ‘carers’ are not *per se* ‘parents’. A child may have carers who do not step into the shoes of their parents but look after the child for specific periods of time (for example whilst the parents are at work) or even longer term (for example where the parents are travelling abroad for a holiday or family visit). Those carers may be professionally employed; they may be relatives; or they may be friends. In all those cases, it may properly be said that there is an element of dependency between the child and his or her carers. However, that alone would not, in my judgment, give rise to a ‘parental relationship’”.

That extract confirms the highly fact sensitive nature of the inquiry to be made.

15. What then of the evidence which was before Judge Black. She heard oral evidence from the Appellant. Judge Storey refers in his permission grant to the supporting evidence of a witness but there was

no oral evidence from any other witness, and I infer that he intended to refer to the letters of support in the Appellant's bundle.

16. Dealing first with the Appellant's witness statement dated 3 April 2019. His evidence on the issue of his relationship with the two children is as follows:

- [6] My deceased brother left three children, from two different women, in the UK. They are all British citizens and live with their mothers in the UK.
- [7] My brother had two children with [MM]. Their details are as follows:
- Name: [AG], date of birth [..]
  - Name: [AI], date of birth [..]
- [8] [MM] and the children currently live at [..] Basildon [..]. I have a very strong relationship with [AG] and [AI].
- [9] I go to see the children fairly regularly and they are always excited to see me. When I go there, I take some gifts and food for them. I always make sure to spend time with them and check that they are doing okay and are not in need of anything.
- [10] Ever since my brother passed away, the children have not had a father figure in their life and they now consider me as a father figure. I am submitting pictures in my appeal bundle which show how happy the children are when they are with me.
- [11] I either spend time with the children at their home or take them outside. At home, we play games together or I read children's books to them and help them with their homework. Sometimes, I also cook some meals for the children from time to time.
- [12] I also regularly take the children to the park to play games, help them play in the children's play area with climbing activities and on swings. I also regularly take the children out to restaurants and have even taken them to cinema to watch children's movies from time-to-time.
- [13] I wish to be able to continue to provide tangible support for the children of my brother until they are grown up and fully independent.
- [14] I am aware that I could keep in contact with them through modern means of communication, but I do not believe that this is sufficient to replace the face-to-face human contact I have with them in the UK.
- [15] My intention is to continue playing a real role in the children's life with the children of my brother on a very regular basis. I want to provide financial support and physically take them through their childhood and teenage life. Since I was not there to save my brother from his murderers, I want to at least contribute to bring up his children."

17. The Appellant has produced two letters of support and documents from friends who are providing him with accommodation and financial

support while he is unable to work. Neither letter refers to his relationship with the children. There are also a series of photographs showing the Appellant with the children.

18. Whilst I entirely sympathise with the Appellant's wish to remain in the UK with his brother's family, the evidence is, as Judge Black found, entirely insufficient to establish that he has a parental relationship with the children. Indeed, Mr Ahmed accepted that the evidence was "not extensive". Judge Black's reference to there being "no evidence" has to be read in context. She is there referring to the complete absence of any evidence from the children's mother supporting the Appellant's case. His own evidence shows that he visits the children (although it is not said for how long or with what frequency). He does not live with them. It is not suggested that he has any input into their upbringing. It is not suggested that he takes any important decisions in relation to them, such as where they go to school, and the other sorts of decisions which a parent with a direct role in a child's upbringing would need to take. He says that he would like to support them financially, but he is not doing so currently (and even that would be insufficient without more to show a parental relationship). The only evidence other than his own statement is the series of photographs of him with the children. Those cannot establish a parental relationship.
19. As the Judge found, the evidence shows that he has "a genuine and meaningful relationship" with the children but that is as between an uncle and nephew and niece. Mr Ahmed submitted that the Judge had failed to make a clear distinction between that and a parental relationship. I do not accept that. The Judge has made clear that she is considering two different concepts. There is no inconsistency between the finding that he has a relationship which is genuine and meaningful, but which is one "as between family members" and a finding that the Appellant has not established that he has a parental relationship with the children.
20. It is entirely understandable that the Appellant would wish to maintain contact with the children as a means of retaining a connection with his deceased brother, but this does not show that he has "stepped into the shoes" of that brother. He may regard himself as a father figure for the children. They may even see him as such in the absence of their father (although there is no more than assertion of that fact by the Appellant and it is not developed in terms of how that is expressed in practice). In any event, that does not mean that there exists a parental relationship. As the Judge points out, particularly in circumstances where the children and their mother apparently still visit Albania, there is no reason why they cannot continue those visits and maintain contact in that way with the Appellant (as well as through modern means of communication which the Appellant accepts could be used to maintain some form of contact).

21. Mr Ahmed submitted that the Appellant's position ought to be compared with, for example, a biological father who takes no interest in his child's upbringing but would still be considered to have a parental relationship whereas the Appellant, who does substantially more for his nephew and niece does not. However, that underlines the factual sensitivity of the issue. A biological parent in the situation outlined by Mr Ahmed might be found to have a parental relationship in such circumstances due to the nature of the biological relationship but that is not inevitably the case. If for example, the father did not live with the child and had negligible contact, he might well be found not to have a subsisting relationship of that nature notwithstanding the paternal link. All depends on the facts and the evidence of those facts.
22. Although the Decision is brief, given the paucity of the evidence in this case, the findings made by the Judge and her reasons are sufficient to explain why she reached the conclusion she did about the existence of a parental relationship. As the guidance on which the Appellant relies in his grounds makes clear, whether a parental relationship exists depends on the facts and the evidence. Here the facts and the evidence do not establish that relationship. The Judge was entitled to reach the conclusion she did. Indeed, on the evidence before her, it is difficult to see what other conclusion could be drawn.

### **CONCLUSION**

23. For all the above reasons, I am satisfied that the Decision does not contain an error of law. Accordingly, I uphold the Decision.

### **DECISION**

**I am satisfied that the Decision does not contain a material error of law. I uphold the decision of First-tier Tribunal Judge G A Black promulgated on 18 April 2019 with the consequence that the Appellant's appeal stands dismissed**



Signed  
2019  
Upper Tribunal Judge Smith

Dated: 8 August