



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

Appeal Number: HU/20182/2018

THE IMMIGRATION ACTS

Heard at Field House

On 21 October 2019

**Decision & Reasons
Promulgated**

On 19 November 2019

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MIAH [T]
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr S Kotas, a Senior Home Office Presenting Officer

For the Respondent: Mr A Chohan, Counsel appearing by Direct Access

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Andonian on 18 July 2019, allowing the claimant's appeal against her decision to refuse this application for leave to remain.
2. The claimant is a Bangladeshi citizen who entered the United Kingdom clandestinely on 4 July 2005. He appeared in person before the First-tier Tribunal. There was no Home Office Presenting Officer to represent the Secretary of State.

3. The claimant is the father of a son born on 13 February 2015 in the United Kingdom to his now estranged wife. His wife is a British citizen, so the child is a qualified child. The boy is still only four years old. Based on his relationship with his wife, the claimant was granted leave to remain outside the Immigration Rules HC395 (as amended) from 13 June 2014 to 13 December 2016, but by the time he applied to renew his leave in November 2016, the marriage had failed and leave to remain was refused.
4. The First-tier Judge heard oral evidence from the claimant, which stands unchallenged as the Secretary of State did not arrange representation in order to cross-examine the claimant or make written or oral submissions. The effect of that is that the claimant's evidence stands unchallenged.
5. The First-tier Judge at [44] found that:
 - "44. Based on the evidence given by the [claimant], the fact that he was unrepresented, had not properly prepared the papers for his appeal, he told me that he sees his son in the presence of his wife at the nursery approximately once every twelve days, noting also correspondence from a family mediator, and payments being made to his son from time to time by his bank account on file, I thought this was an appropriate case to give the [claimant] the benefit of the doubt in regard to some parts of his evidence, in particular the fact that he sees his son once every two weeks at the nursery supervised by his former wife, and the fact that he and his wife have divorced. ...
 46. The [claimant] had told me that he had not started mediation proceedings as a prelude to a contact order for immigration purposes but he wanted to make sure there was something concrete in terms of the court order, or a settled agreement endorsed by the court, so that he could fall back on it if his wife changed her mind and suddenly refused him even supervised contact to their son. That is why he was going through the process. He said that his wife was unpredictable."
6. The Judge at [49] considered that the Secretary of State would no doubt grant appropriate leave, but held that in any event, the claimant had discharged the burden of proof to show that he was entitled to leave to remain on human rights grounds based on his relationship with his son.
7. The basis of the First-tier Tribunal's decision, albeit not expressly stated, is the public interest provisions of part 5A of the Nationality, Immigration and Asylum Act 2002 (as amended), and in particular, Section 117B(6) thereof:

"Article 8: public interest considerations applicable in all cases

117B(6) 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.

8. Regular contact, payments to the child, and engaging with mediation in order to ensure that the contact would be maintained are more than sufficient evidence to support the First-tier Judge's finding of fact that there was a genuine and subsisting parental relationship between this claimant and his British citizen child. Section 117(6)(a) is met.
9. I am satisfied also that it was open to the First-tier Judge to find that it was not reasonable for this British citizen child, who lives with his British citizen mother, to leave the United Kingdom, such that section 117(6)(b) is also met.
10. On that basis the First-tier Judge's decision was neither irrational nor unlawful and was plainly open to him on the facts.
11. The Secretary of State's appeal is dismissed, and the decision of the First-tier Tribunal stands.

Conclusions

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

I do not set aside the decision.

Signed **Judith AJC Gleeson**
November 2019
Upper Tribunal Judge Gleeson

Date: 14