Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01928/2019

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 7 January 2019	**On 12 February 2020**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MUHAMMAD SAGHIR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. A national of Pakistan, the appellant has permission to challenge the decision of Judge Grimmett of the First-tier Tribunal (FtT) sent on 9 July 2019 dismissing his appeal against the decision made by the respondent on 19 February 2019 refusing his protection claim.

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2. Five errors were alleged to have been committed by the judge:

   (a) failing to consider that to remove the appellant whilst his family court proceedings are ongoing was disproportionate, contrary to the guidance given in **Mohan [2012] EWCA Civ 1363** was cited in support;

   (b) unfairly making adverse findings about the motives behind the appellant's contact application when this was not a submission made by the respondent or put to the appellant;

   (c) making inadequate findings on the appellant's protection claim;

   (d) failing to consider the appellant's evidence that the breakdown of his marriage had reignited the previous family dispute and that his "brother has been beaten up in Pakistan as a warning to me"; and

   (e) failing to engage properly with either the appellant's protection or Article 8 claim.

3. I am grateful to the appellant and Mrs Aboni for their submissions. I should point out that the appellant produced a number of documents at the hearing including a further Cafcass report dated 11 July 2019, a July 2019 certificate showing that he had successfully completed a parenting course and a letter from Heart of Worcestershire College dated 16 October stating that he was enrolled on a course to improve his English skills. Since these all post-date the decision of the FtT, I cannot take them into account in deciding whether the judge erred in law although I would observe that their content is consistent with what is foreshadowed in the previous Cafcass report that was before the judge.

4. Ground (a) focuses on the evidence set out by the appellant in his witness statement of 2 May 2019 that he had started new court proceedings in May 2018 to have contact with his children and had attended the first directions hearing in Derby dated 4 February 2019 where no safeguarding issues were raised.

5. I do not consider ground (a) has merit. In the first place, it is clear that the judge took fully into account the appellant's evidence regarding ongoing family court proceedings. At paras 10 – 13 she wrote:

   > "10. The respondent does not dispute the fact that the appellant has two children in the UK who are British. Some court documents have been lodged from the Family Court. It is not clear whether that Court granted leave for them to be disclosed. It is plain that only some of the documents have been disclosed. The appellant said that he does not have direct contact with the children, but he is allowed to write to them. [A1] has never seen the appellant

and [A2] last had direct contact with him in 2012 when he was one year old.

11. The appellant instructed solicitors in May 2018 to seek contact, after he had sought asylum. He said at the hearing that he sent the children presents every week. He is not currently allowed direct contact, but he is allowed to write to them which he says he is doing. At p89 of the bundle is a letter from Cafcass to the Derby Family Court dated 4 April 2019 it says there was a child arrangement order for indirect contact dated 1 April 2016. Although it is said both parents have parental responsibility, the letter noted the appellant had not had even indirect contact with the children for over a year. No progress had been made since the last proceedings in 2016. The report noted the appellant's former wife believed to application was made because he wants to remain in the UK. It also said the appellant would have to explain why indirect contact had not been maintained suggesting that the appellant has not been writing to them as he claimed. He said that he had recently started sending them letters but that was not the view of the Family Court only last month.

12. I am not satisfied that he has shown he enjoys family life with his children as he has not seen his younger child ever and has not seen his older child since she was one. He has not explained why he did not pursue an application until he was threatened with removal.

13. It is usually in the best interests of children to have contact with both parents. I am in difficulty in reaching any conclusion about their best interests as I have no evidence about their lives. There is nothing to suggest they are not properly cared for by their mother. As they have always lived with her, I am satisfied it is their best interests to continue to do so. I have no seen no independent evidence to suggest it is in their best interests to see their father. He does not appear to have made any serious attempts to have contact with them until he was told he had to leave the UK. That strongly suggests his application was made to support his desire to remain in the UK not to establish a relationship with the children. As he has played no part in the children's lives, as he does not appear to have made any significant attempt to see the children until now, when he is face with removal, I have serious doubts as to the reason behind his application. The delay in and the timing of the application for contact means that I cannot be satisfied it is in the children's best interests to have direct contact when he has not shown by his past behaviour that it is likely, should he gain a contact order, that he will actually see the children."

6. The appellant's grounds do not challenge any specific aspect of these findings save for the adverse reference in para 13 regarding the reasons behind the appellant's application (which I deal with separately below). Second, this was not a case where the appellant was seeking for the first time to pursue contact proceedings. As noted in the respondent's refusal decision, he had applied on 21 May 2013 for LTR in order to seek custody of the children and had received a grant of leave for that purpose for 5 September 2013 – 4 April 2014, which had been extended further from 8 April 2014 – 8 October 2014. Third, it is apparent from the family court documentation that the appellant never succeeded in being granted custody and the family court had only ever agreed indirect contact. A final order was made on 1 April 2016 and further proceedings have been confined to the issue of indirect contact. Fourth, on the evidence before the judge, the appellant had not been consistently utilising even the provision made in the family court order for indirect contact. The appellant's own evidence does not explain why this has been the case, although he does point out that he has taken steps, in line with the family court wishes to pursue a parenting course and improve his English language. Fifth, since the case of **Mohan** the Immigration Rules contain provisions for leave to remain to be granted to persons who can show they have direct access to their child - E-LTRP.2.4(a)(ii) and the respondent was plainly entitled to conclude the appellant could not benefit from these provisions. Sixth, in terms of "proportionality", this could only have been an issue if the appellant had been able to establish that he had a genuine and subsisting family life relationship with his children, whereas the judge found at para 12 that he had not shown that he enjoys family life with his children. Even if the judge has proceeded on the basis that the appellant's biological ties with his children sufficed to constitute family life in formal terms, her assessment would have come to the same conclusion since the factual content of the appellant's relationship with his children was virtually non-existent.

7. As regards ground (b), it is true that the respondent's refusal letter does not allege ulterior motive in the appellant pursuing family court proceedings, but it was clearly a key part of the appellant's written and oral evidence that he was actively seeking to maintain contact with his children and it was open to the judge, having considered that evidence, to view it adversely. The judge's findings that "he does not seem to have made any serious attempt to have contact with his children [(even in 2007, 2011)] until he was told to leave the UK" is consistent with the data produced about the appellant's immigration history (having become an overstayer in January 2013 and having first applied for leave to remain on the basis of contact with his children in May 2013). According to the Cafcass report of 4 April 2019, the appellant made a further application for a Child Arrangements Order in 2017 but it goes on to note that "there has been no indirect contact for over a year. He has never met his son." The appellant was given every opportunity to demonstrate his pursuit of contact had been sustained and continuous. The judge was clearly entitled to find he had failed to demonstrate such.

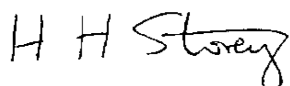
8. It is convenient to take grounds (c) and (d) together. As regards (d), I accept that the judge should have addressed the appellant's evidence that the breakdown of his marriage had reignited the land dispute. However, it was also the appellant's parallel evidence that the land dispute had been settled as the land was still jointly owned by the two families, and the judge cannot be faulted for accepting that evidence. It was open to the judge to consider that if the family was still concerned about the dispute they could have attempted to approach the police or the courts, but they had not. In any event, even if the judge did err in failing to consider the evidence of recrudescence of the land dispute, the respondent had concluded in the reasons for refusal decision that even if the appellant would be at risk in his home area he could relocate safely and reasonably. The appellant had failed to produce evidence to substantiate his claim that the family on the other side of the land dispute had influence and power beyond their home area. The appellant's asylum claim never had a realistic prospect of success and it would be wholly unwarranted to consider there was any material error in the judge rejecting it. It is apparent from what has already been said that the judge did adequately address the appellant's protection claim.

9. As regards (f), it amount in essence to the contention that the judge's treatment of the appellant's protection of Article claim were too cursory. I have already explained why I consider that there was no material error in the judge's treatment of the asylum claim. In relation to the appellant's Article 8 claim, it was addressed in detail in paras 10 – 13 and was properly found to be wanting by virtue of the lack of factual content to his relationship with his two children. Whilst the judge did not conduct a detailed examination of factors for and against his Article 8 claim in the manner urged by the Supreme Court in **<u>Hesham Ali</u> [2016] UKSC 60**, the only potentially strong point in the appellant's favour hinged on the nature and content of his relationship with his children, which the judge examined in depth and found wanting.

10. To conclude I am not persuaded that the judge materially erred in law and accordingly his decision must stand.

No anonymity direction is made.

Signed   Date: 15 January 2020



Dr H H Storey
Judge of the Upper Tribunal