

**Upper Tribunal  
(Immigration and Asylum  
Chamber)**  
IA/19812/2012



Appeal Numbers:

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 21<sup>st</sup> August 2013**

**Determination  
Promulgated  
On 27<sup>th</sup> September 2013**

**Before**

**Deputy Upper Tribunal Judge Rimington  
(Immigration and Asylum Chamber)**

**Between**

**R L P  
(Anonymity direction made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Howard, instructed by Fountain Solicitors

For the Respondent: Mr N Smart, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. In this determination I will refer to the parties as they were before the First-tier Tribunal, [RLP] as the appellant and the Secretary of State as the respondent.
2. The appellant is a citizen of Jamaica born on [ ] 1967 and he appealed against a decision of the respondent dated 4<sup>th</sup> September 2012 to deport the appellant following a decision to refuse him asylum. The appellant

claims the decision is a breach of his rights under the Human Rights Act 1998.

3. The appellant arrived in the UK as a visitor in 1997 and remained with a student visa. In 2000 he claimed asylum and later that year married a British citizen. In 2001 he was convicted of grievous bodily harm for which he was given a 4 year sentence of imprisonment. In 2002 his daughter was born. He was released from custody in August 2003. His asylum appeal was refused in September 2003 and he then applied for leave to remain as a spouse. The appellant lodged further representations with regards an asylum claim (on the basis of gang violence and the ensuing death of family members) and his appeal was finally refused in September 2012.
4. The appellant claimed, *inter alia*, that he wished to remain in the UK to have contact with his daughter. He had divorced his wife and mother of the child in 2011.
5. On 30<sup>th</sup> May 2013 FTT Judge Cheales and Mr G F Sandall in a determination allowed the appeal to the limited extent that a short period of discretionary leave should be made at the discretion of the respondent. It was considered that a fresh deportation could be made when the full facts were before the court.

### **Application for Permission to appeal**

6. The respondent filed grounds for permission to appeal on the basis that the FTT panel had made no or alternatively inadequate findings regarding the merits of the appellant's appeal in the face of the ongoing family proceedings and failed to follow the guidance in **RS (India)** [2012] UKUT 00218 (IAC) before allowing the appeal.

### **Grant of Permission to appeal**

7. Permission to Appeal was granted by FTT Judge Warren Grant who stated that it was arguable that the Tribunal had failed to make any findings on the merits of the appellant's appeal without giving any reasons for failing to make any findings both in general and in the light of the guidance set out in **RS (India)**

### **The Hearing**

8. Mr Smart submitted that at the hearing which took place on 9<sup>th</sup> May 2013 before the First Tier Tribunal it was evident that the full hearing before the Family Proceedings Court was due to take place on 24<sup>th</sup> May 2013. A decision was therefore imminent. The court was informed that his daughter did not wish to see him although it was accepted that the CAFCASS report was not before the court. This should have reduced the weight placed on the issue of the family proceedings. The Tribunal should have followed the guidance in **RS**.

9. Mr Howard asserted that the panel had correctly applied the principles in **RS (India)** and **MS (Ivory Cost) v SSHD** [2007] EWCA Civ 133. The panel would not have been able to pre determine the outcome. The appellant now had indirect contact with his daughter. The panel were aware of the salient facts and considered the prospect of an adjournment but rejected this on the basis that proceedings could be lengthy.

## **Findings**

10. **Shizad (sufficiency of reasons: set aside)** [2013] UKUT 00085 (IAC) confirms that *'Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.'*
11. However, although the Tribunal recorded an agreement between the parties that a decision in the best interests of the child could not be made before the decision on contact had been made by the family court [8] and made a reference to the guidance in **RS** and **MS**, no findings were made at all in respect of the merits of the case. The conclusions of the Tribunal consisted of one and half lines [9].
12. The Tribunal therefore did not follow the guidance set out in **RS** because having failed to make findings it could not have decided whether, in line with **RS**, the outcome of the proceedings were likely to be material. Nor was there any consideration of whether the proceedings were instituted to delay or frustrate the removal rather than promote the child's welfare. The Tribunal should have considered the extent of the previous interest in the child, the timing of the contact proceedings and the commitment with which they have been progressed, when a decision was likely to be reached and what materials were already available or could be made available to identify pointers to where the child's welfare lay.
13. Having gone through the above exercise *then*, the panel should consider whether the claimant had at least an Article 8 right to remain and *then* if so, the appeal might be allowed to a limited extent. The First Tier Tribunal failed to follow this process. That was an error of law.
14. Alternatively the Tribunal should consider if it was more appropriate to grant a short period of adjournment. Bearing in mind the date for the substantive determination of the family proceedings was approximately 2 weeks after the hearing before the IAC hearing, this was a matter which should have been addressed but was not. This was an error of law.
15. The panel did not follow the guidance in **RS**, made no assessment of the evidence and no findings in respect of the merits as indicated. Therefore there was an error in law which could affect the outcome. As such the determination cannot stand and should be remitted back to the First Tier Tribunal for a full and comprehensive evaluation of the evidence and a full hearing.

**Direction regarding anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

**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 their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.**

Signed

Date 21<sup>st</sup> August 2013

Deputy Judge of the Upper Tribunal Rimington

**Directions**

The matter should be remitted back to the First Tier Tribunal for a fresh hearing.

The appellant's solicitors are to use their best endeavours to make available to the First Tier Tribunal a copy of the CAFCASS report.

All further evidence to be served at least 14 days prior to the fresh hearing before the FTT