



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

Appeal Number: HU/04583/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 19 October 2017**

**Decision & Reasons
Promulgated
On 20 November 2017**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AL RICHARDO GREEN

(anonymity direction not made)

Respondent

Representation:

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

For the Respondent: Mr J Waithe, Counsel instructed by Okafor & Co Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing to a limited extent an appeal brought by the respondent (hereinafter the claimant) against the decision of the Secretary of State refusing him leave to remain.
2. The short point is that the claimant is the father of a child but he does not have a good relationship with the child's mother and when the case came before the First-tier Tribunal any contact between the father and child was extremely skimpy.

3. The First-tier Tribunal Judge was concerned not to make a decision that could be inappropriate given that the Family Courts might have been involved in a process of encouraging contact between the child and her father. That much I understand but the judge simply should not have done what he did. The judge suggested that the case should be “remitted back” for the Secretary of State to review and make a further decision. Put simply there is no power to do that. The judge’s job was to make a decision on the Article 8 claim that was presented to him. It may have been appropriate to involve the Family Court Protocol. It may have been appropriate to have adjourned awaiting the further decisions of the family court but it was not appropriate to avoid making a decision and remit back in the way that the First-tribunal purported to have done. There is just no power to do that. The First-tier Tribunal has not done its job. I therefore set aside the decision of the First-tier Tribunal.
4. I then have to decide what to do next. I am told by Mr Waithe that there is a hearing in the Family Court on 12 December of this year and that is not very far away now. It may be that that will introduce an element of finality although one must not assume that that is right. It would not be helpful for me to make a final decision today knowing that the family courts are still involved and knowing that the situation might be clearer in a few weeks time. If I cannot deal with this sensibly today there is no point in the Upper Tribunal dealing with it at all and having set aside the decision I return the case to the First-tier Tribunal for it to be decided again.
5. I do not propose to make any directions about how the First-tier Tribunal goes about its business, even if I could, but I do draw attention to the fact that the situation is likely to be clearer after 12 December and it may be that the First-tier Tribunal will want to list the matter after that date.
6. I respectfully remind the appellant’s representatives, although I am sure that they know, that it may be appropriate to involve the Family Court Protocol and it is certainly in everyone’s interests, I would have thought, for them to serve all the papers that they can about the Family Court case and evidence about the current position in time for the next hearing, whenever it might be, but that is a matter that will probably be covered by directions from the First-tier Tribunal.
7. I understand the judge’s reasons for doing as he did but this appeal really should not have been decided in the way that it was.
8. I have not made an order restricting reporting in this case. It may be that such an order is appropriate in a future decision that deals with the child’s welfare.

Notice of Decision

To the extent indicated above, this appeal is allowed.

Signed



Jonathan Perkins, Upper Tribunal Judge

Dated: 17 November 2017