



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000096
First-tier Tribunal No:
EA/02847/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 March 2023

Before

UPPER TRIBUNAL JUDGE LANE

Between

Secretary of State for the Home Department

Appellant

and

Mohammad Musaddik HUSSAIN

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Presenting Officer
For the Respondent: Mr West

Heard at Phoenix House (Bradford) on 9 December 2022

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and to the respondent as the appellant as they appeared respectively before the First-tier Tribunal.
2. The appellant appealed against the decision of the Entry Clearance Officer dated 12 March 2020 refusing to grant his application for a derivative residence card to him as the primary carer of a British citizen in accordance with regulations 16(5) and 12 of The Immigration (European Economic Area) Regulations 2016 ("the 2016 regulations"). The First-tier Tribunal allowed his appeal. The Entry Clearance Officer now appeals, with permission, to the Upper Tribunal.

3. The appellant's wife is suffering from cancer. Consequently, she claims to be unable to care for the child of the family without the appellant's presence in the United Kingdom to assist her.
4. Ground 1 complains that the judge did not provide 'a detailed analysis of the present arrangements and how they bear upon the requirements.' The respondent asserts that the judge failed to make clear findings as to the 'present involvement of the child's mother in her day to day care.' Without such an analysis, it was not possible for the judge to conclude that presence of the appellant was necessary in accordance with the regulations.
5. I do not find that this ground has been made out. At [34], the judge found that the appellant's wife is a credible witness, a finding not challenged by the respondent. I agree with the appellant that the judge conducted a detailed analysis of the evidence and at [28] and [31-32] and that he made findings which were sufficiently clear to enable him to determine the appeal. It is tolerably clear from the decision that the judge was satisfied that the presence of the appellant in the United Kingdom is necessary and would not merely make life better than their current sub-optimal conditions. In my opinion, ground 1 amounts to little more than a disagreement with findings available to the judge on the evidence.
6. The same is the case with Ground 2. The respondent contends that 'the Judge's reasoning appears to be very simply that a child's best interests are best served by being with both parents. That is not a sufficient analysis of whether the requirements of the regulation are met - were it so then no application by a parent with an active role in the child's upbringing could be refused.' Although the judge does repeat the truism that it is generally in a child's best interests to be brought up by both parents [32] that should not obscure his clear finding that the child's best interests would certainly not be promoted should she have to go into local authority care which he found to be likely given the mother's serious health condition and the appellant's continued absence. As the appellant's R24 statement acknowledges, it can be said that the judge has taken a more generous view of the facts than another judge may have taken but his fact-finding is detailed and cogent and his conclusions are not perverse; it is not the task of the Upper Tribunal to interfere with such a decision.
7. Ground 3 complains that 'although this was an application for an EEA family permit pursuant to a right under regulation 16(5), the Judge refers at various points to a derivative residence document and to leave to enter and remain.' Such 'uncertainty' 'does not inspire confidence that the determination is safe.' At [36], the judge wrote:

36. This level of care, in my judgment, although the best the Appellant can provide from Bangladesh, does not meet their daughter's best interests, particularly in the current situation of her mother being seriously ill and receiving debilitating treatment in her effort to make a full recovery. I accept that absent the Appellant being present and living with his family in the UK the level of care being provided to their daughter by her mother with the assistance of her neighbour and sister-in-law is not sufficient to show she can be adequately cared for without the Appellant being granted leave to enter the UK pursuant to Regulation 16(5) and that the level of care she currently receives is not in her best interests.

This paragraph illustrates the judge's use of inaccurate terminology (the parties agree that the reference to 'being granted leave to enter' is incorrect) but it also shows, as the R24 statement notes, that the 'the FTTJ considered the correct regulation. The FTTJ was entitled to arrive at the finding he did at [36]. The findings were well within the reasonable range of responses open to the FTTJ on the basis of the evidence before him.' I find that, read as a whole, it is tolerably clear that the judge applied the correct law to facts which, on the evidence, he was entitled to find. Accordingly, I dismiss the Secretary of State's appeal.

Notice of Decision

The Secretary of State's appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 10 January 2023