



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

Appeal Number: AA/10333/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 14 July 2014**

**Determination Sent
on 21 July 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HUNER ANWAR MOHAMAD

Respondent

For the Appellant: Mrs S Saddiq, Senior Home Office Presenting Officer
For the Respondent: Mr K Forrest, Advocate, instructed by Livingstone Brown,
Solicitors

No anonymity order requested or made

DETERMINATION AND REASONS

- 1) This determination refers to parties as they were in the First-tier Tribunal.
- 2) The SSHD appeals against a determination by First-tier Tribunal Judge Wallace, dated 14 March 2014, allowing the appellant's appeal on Article 8 grounds outwith the Immigration Rules.
- 3) The grounds criticise the judge for failing to apply the criteria established by the case law, and for treating the best interests of the child as *the* primary rather than as a primary consideration.
- 4) Mrs Saddiq submitted that the judge failed to identify a good arguable case for going outside the Rules, and did not explain why the consequences of

the decision were unjustifiably harsh. The proportionality conclusions were thereby flawed, and the interests of the child had wrongly been treated as determinative by themselves. Due weight had not been given to the public interest in the maintenance of immigration control.

- 5) The appellant relied upon a Rule 24 response, and having heard from Mr Forrest in support thereof, I indicated that the SSHD's appeal would be dismissed.
- 6) A judge does not have to cite any specific case, so long as she follows the correct legal approach. There is nothing to suggest that she did not understand the criteria for looking outside the Rules. As an experienced judge in this jurisdiction, she must be given credit for being well aware of the public interest in maintaining the Rules. The facts on which she had to make her proportionality judgment were scarcely in dispute, and fairly straightforward. There can be no quarrel with the finding at paragraph 54 that the appellant is in a genuine and subsisting relationship with his UK citizen partner and that his removal would in effect sever his relationship with his daughter, also a UK citizen. The judge reminded herself at paragraph 55 that nationality is not a trump card, and at paragraph 56 found that it would not be reasonable to expect partner and child to go to Iraq. It could not be suggested that the final outcome is one which no reasonable judge could have reached. The SSHD's grounds amount only to disagreement with the outcome.
- 7) I am fortified in that view by reference to section 19 of the 24 Act, which is to be brought into force on 28 July 2014 and appears to me to be a reliable touchstone in the meantime. There will be inserted into the 2002 Act "Part 5A, Article 8 of the ECHR: public interest considerations". This will codify that little weight should be given to private life or a relationship with a partner established while the person is in the UK unlawfully. The appellant has a criminal history, but it is relatively minor and he is not a person liable to deportation. The new statutory regime is that the public interest does not require removal of a person not liable to deportation where he has a genuine and subsisting parental relationship with a UK citizen child, and it would not be reasonable to expect that child to leave the UK.
- 8) The SSHD's appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal, allowing the appellant's appeal, shall stand.



15 July 2014
Judge of the Upper Tribunal