



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

Appeal Number: IA/27437/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 30th April 2015**

**Determination Promulgated
On 29th May 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ADNAN RASOOL
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Home Office Presenting Officer
For the Respondent: Mr T Hussain, Counsel instructed by RKS Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Bagral made following a hearing at Bradford on 23rd October 2014.

Background

2. The claimant is a citizen of Pakistan born on 19th December 1992. He entered the UK as a student on 27th March 2011 with leave until 30th November 2012 which was curtailed on 17th June 2012. On 31st October 2012 he applied for indefinite leave to remain as the spouse of a settled

person and his application was refused. He subsequently made an application to remain on human rights grounds which was again refused.

3. On 14th October 2013 he made further representations to remain on human rights grounds as the partner of a British citizen, and refused on 16th June 2014. The appeal against that decision was the subject of the hearing before the Immigration Judge.
4. The judge was not satisfied that the claimant had been entirely candid about his reasons for ceasing his studies in the UK. She rejected his explanation that he did not inform the Secretary of State of his change of circumstances because he did not know how to locate the Home Office. On the other hand she accepted, and indeed it was not disputed, that he had a genuine and subsisting relationship with his wife and that he was clearly a loving and devoted father and shared full responsibility with her in respect of their son.
5. The sponsor does not work and she and the claimant are supported by her mother who is in receipt of disability living allowance. The judge rejected the claim that the sponsor was the sole carer of her ailing mother and that she could not therefore relocate to Pakistan, particularly as she had said that she was prepared to go to Pakistan with him if required to do so and she did not accept that the mother required a full-time carer or that the sponsor adopted that role.
6. So far as the Rules were concerned, it was conceded that the claimant could not meet paragraph 276ADE and there were no insurmountable obstacles so far as the partner was concerned to family life continuing in Pakistan. She was however satisfied that the claimant qualified for leave to remain under Appendix FM as a parent and, in the alternative, that he succeeded on Article 8 grounds outside the Rules.

The Grounds of application

7. The Secretary of State sought permission to appeal on the grounds that the judge had failed to provide adequate reasons for her findings and that, given that the claimant and his partner stated that they would relocate if removed, it would be reasonable for the child to leave the UK. The circumstances identified by the Tribunal cannot amount to being either very compelling or exceptional and, had the judge taken into account the submission from the Secretary of State that the family could choose whether to relocate or not, she would have found the decision to remove was proportionate.
8. Permission to appeal was granted by Judge Cruthers on 10th February 2015 for the reasons stated in the grounds.

Submissions

9. Mrs Pettersen relied on her grounds and submitted that the parents in this case had taken an informed decision to start their relationship and to have

a child in circumstances where they were aware that they could not meet the requirements of the Rules.

10. Mr Hussain submitted that this was in essence a rationality challenge and the conclusions of the judge were open to her for the reasons which she gave.

Findings and conclusions

11. This is a meticulous determination. The judge carefully considered all of the relevant evidence in relation to the history of this relationship and made clear findings which are not challenged in the grounds.
12. She set out the relevant case law including Sanade and others (British children - Zambrano - Dereci) [2012] UKUT 00048, MF (Nigeria) v SSHD [2013] EWCA Civ 1192, Omutunde (best interests - Zambrano applied - Razgar) Nigeria [2011] UKUT 00427 and SSHD v Hayat (Pakistan) [2012] EWCA Civ 1054, none of which are referred to in the grounds.
13. She took into account the claimant's immigration history which involved him overstaying his leave which expired on 17th June 2012. She also held against him the fact that he was not financially independent and supported by others. Moreover, the relationship was formed at a time whilst he was here unlawfully. She said that if he did not have a child the results of the appeal would be clear-cut and he would be removed to Pakistan and the sponsor could go with him.
14. The basis of the judge's decision is that, either the claimant would have to return to Pakistan alone, which would involve the family being separated, or his partner and child would be forced to join him there. As the child was a British citizen she said that this could not be regarded as reasonable. She noted that on the facts of ZH (Tanzania) UKSC 4 [2011] the appellant in that case had an appalling immigration history but that did not outweigh the best interests of the children.
15. The Secretary of State has formulated her challenge on the basis that there is nothing exceptional about the claimant's circumstances and that the Tribunal have failed to identify any compelling circumstances which would lead to an unjustifiably harsh outcome.
16. First, the grounds fail to engage with the point that the judge allowed the appeal under Appendix FM because one of the exceptions in EX.1 applies to him.
17. Second, they fail to address the fact that the judge applied Section 117B(6) of the 2002 Act which states that the public interest does not require removal if a person has a genuine and subsisting parental relationship with a UK citizen child and it would not be reasonable to expect the child to leave the UK.

18. If the Secretary of State is to be in a position to successfully challenge appeals allowed on the basis that the judge did here, then she has to make those arguments to the judge at the hearing and in any subsequent grounds of challenge and/or in submissions to the Upper Tribunal. The grounds as drafted amount either to a re-argument of the case, and not an error of law, or as a challenge on rationality grounds, which is not made out.

Notice of Decision

19. The judge's decision shall stand. The claimant's appeal is allowed and the Secretary of State's challenge dismissed.
20. No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor