



IAC-FH-AR-V1

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

Appeal Number: IA/37639/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 21 August 2015**

**Decision & Reasons Promulgated
On 9 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**NAQEEB UR REHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Islam, a legal representative

For the Respondent: Mr C Avery, a Home Office Presenting Officer

DECISION AND REASONS FOR FINDING NO ERROR OF LAW

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Lloyd ("The Immigration Judge"), following a hearing at Birmingham on 26 January 2015. The appeal was run both on the basis that the appellant fell within the Immigration Rules under paragraph 276ADE (private life) and/or Appendix FM (family life) or, alternatively, on the basis that his claim should be considered as a so-called "freestanding" one under Article 8 of

the European Convention on Human Rights (“Article 8”). The Immigration Judge decided to dismiss the appellant's appeal on all grounds.

2. The appellant appealed to the Upper Tribunal from that decision and the matter came before First-tier Tribunal Judge Nicholson. Judge Nicholson thought that there were arguable grounds in relation to the failure of the judge to consider Section 117B and in particular 117B(6) of the Nationality, Immigration and Asylum Act 2002. That section requires that, in the case of a person not liable to deportation, the public interest does not require a person's removal where he has a genuine and subsisting relationship with a qualifying child and it would not be reasonable to expect the child to leave the United Kingdom. A “qualifying child” is defined in section 117 D of that Act as a child who is a British citizen or who has lived in the UK continuously for 7 years or more.

The Upper Tribunal hearing and consideration of the merits

3. I have been assisted by oral submissions by both representatives. Mr Islam helpfully explained the background to the present appeal. Where appropriate his client tried to give additional assistance to the Tribunal.
4. The present the appeal is on a point of law (see section 11 (1) of the Tribunals, Courts and Enforcement Act 2007). The appellant essentially attacks the decision of the First-tier Tribunal for its failure to give a properly reasoned decision.
5. I have to say when I initially considered the decision of the First Tier Tribunal (FTT) I could not see any obvious error of reasoning. However, it became clear from Mr Islam’s submissions that some of the Immigration Judge’s reasons could have been fuller. The focus of the present appeal, however, relates to the welfare of Yusaf, who was born on 7th April 2013.
6. I found the arguments for each side quite evenly balanced but having examined the First-tier Tribunal’s decision with care and heard all the submissions, I am not persuaded that there was a failure of reasoning. The Immigration Judge decided the case based on the evidence before the FTT. There was evidence that Yusaf suffered from ADHD but it was far from conclusive evidence and it was quite an early stage of the diagnosis of this behavioural disorder. There has since been evidence in the form of the detailed a report from a paediatrician but this was not available before the FTT and there is no application to adduce further evidence before the Upper Tribunal. Furthermore, the welfare of Yusaf, although a paramount consideration, is not the only consideration. The Immigration Judge found that Yusaf and his mother would not be required to leave the UK in the event that the appellant were removed. Therefore it appears that section 117B (6), which states that the public interest does not require a person’s removal where he has a genuine and subsisting relationship with a child who is a British citizen where it would not be reasonable for the child to leave the UK, was not shown to be relevant. The rights of Yusaf for his welfare to be safeguarded had to be balanced against the other public

interest considerations under that section and under the wider Immigration Rules. The Immigration Judge, particularly in paragraph 28 of his decision, carried out a balancing exercise. He considered the welfare of the Yusaf as part of that exercise.

7. The evidence at the date of the hearing before the FTT appears to have been inadequate to justify a conclusion that there had been a fundamental change in position since the hearing before Judge Elvidge in November 2013. At that date it appears that the sponsor gave assurances that the appellant did not want to settle in the UK and they did not intend to pursue family life in the UK, at least at that stage. It may be the evidence has moved on since and it may be that with the passage of time further and better evidence may be obtained. But it would be speculative to consider what the evidence might show in the future. The Immigration Judge was entitled to conclude it was not adequate to show any basis upon which the appellant ought to be allowed to stay in the UK.
8. In addition, I am persuaded by Mr Avery, who appears for the respondent, that the hearing before Judge Elvidge is significant background evidence to the present application. The appellant came to the UK on a visit visa. The appellant claims that his circumstances were quite different when he applied for the visit visa than they were when Yusaf was born in April 2013. As Mr Avery pointed out, the circumstances had changed when the matter came before Judge Elvidge. It seems that before Judge Elvidge the appellant claimed that, although he may be tempted to remain in the UK at the conclusion of his visa, he specifically assured the tribunal that was not what he intended to do. The appellant would probably have been aware of Yusaf's behavioural difficulties by the date of the hearing before Judge Elvidge since it has been contended that these were manifest within 10 or 11 months of his birth. At the very least this undermines the credibility of the appellant's claim. Additionally it seems that the parties specifically recognised the difficulties in advancing a claim to family life in the UK, leading Judge Elvidge to conclude (in paragraph 27) that there appeared no circumstances in which he could envisage an Article 8 claim being made. He would regard any such application as a "gross deception" of the immigration authorities and one which would be rightly refused.
9. I find that not to be disproportionate to require the appellant to return to Pakistan to make an application to join his family from there. The reasonableness of placing that requirement on the appellant must be seen in the context of his earlier immigration history referred to above.
10. Mr Islam says that there has been a change in circumstances but I think that the answer to this is that the Immigration Rules do prescribe a route for coming to the UK to form family life. No good reason has been shown why the appellant should not be required to pursue that route to settlement. I hope that that route is still available to him because, obviously, in the long term, it is in the interests of the family to be reunited. The Immigration Judge himself recognised this at to be desirable

at paragraph 28. If this were to occur the sponsor would remain in the UK where, I understand, she has a number of close relatives.

11. Alternatively, the appellant must have maintained close ties in Pakistan with a number of relatives there. Indeed, the sponsor had returned there as recently as September 2013 with the appellant. I am not satisfied that it would be contrary to the child's best interests to return to Pakistan with his parents if this was the course his mother chose to adopt.

Conclusion

12. I have decided that the Immigration Judge was entitled to conclude on the evidence that the welfare of the child was not such an overwhelming factor as to effectively trump all other considerations. Accordingly the appeal against the decision of the FTT will be dismissed.

Notice of Decision

There is no error of law in the decision of the FTT. The appeal against that decision is dismissed. The respondent's decision to refuse further leave to remain stands.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Hanbury