



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/09285/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 9th August 2017

Promulgated

On 15th August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR WAQAS ALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dhanji, Counsel instructed by M & K Solicitors

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

- 1.** The Appellant, a national of Pakistan, appealed to the First-tier Tribunal against a decision of the Secretary of State of 13th October 2015 to refuse his application for leave to remain on the basis of his private and family life in the United Kingdom. First-tier Tribunal Judge S J Clarke dismissed the appeal. The Appellant now appeals to this Tribunal with permission granted on 28th June 2017.
- 2.** The issue in this appeal is a straightforward one arising from the following findings at paragraph 5 of the decision:

“The Appellant has a son called Z born in 2016 and he is a British Citizen, and his wife Mrs B has indefinite leave to remain. It is accepted that the Appellant has a genuine and subsisting relationship with his wife and son and falls within EX.1 of the Rules. However, whilst I find that it is not reasonable for the son as a British Citizen to leave the UK, he can remain in the UK with his mother looking after him...”

- 3.** The judge went on at paragraph 6 to say that he did not find that there are insurmountable obstacles to family life if the Appellant goes back to Pakistan to make an application to join his wife and son because the Appellant’s wife appears to meet the financial requirements of Appendix FM. The judge went on to conclude that there was nothing preventing the family going to Pakistan as a family unit finding their own accommodation or for the Appellant to return and apply to join his wife and son with or without them visiting. The judge concluded that it is reasonable for the Appellant’s wife to look after the son in his absence as she is not working [6]. The judge concluded that the Appellant could not meet the requirements under paragraph 276ADE. The judge could find no compelling reason to consider the Appellant’s case outside the Rules and went on to dismiss the appeal.
- 4.** The Grounds of Appeal to the Upper Tribunal contend that the First-tier Tribunal Judge erred in law in failing to properly apply the provisions of EX.1 and Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 having found that it would not be reasonable to expect the child to leave the UK.
- 5.** Permission was granted on the basis that it was arguable that, having made the finding that it was not reasonable to expect the child to leave the UK, the judge should have allowed the appeal on the basis that the Appellant appears to satisfy EX.1 and Section 117B(6) of the 2002 Act.
- 6.** In the Rule 24 response dated 13th July 2017 the Respondent indicated that she does not oppose the Appellant’s application for permission to appeal.
- 7.** At the hearing before me Mr Whitwell said that he had nothing to add to the Rule 24 notice. He accepted that there was a material error of law in the judge’s decision. He submitted that the decision could be remade on the basis of the finding at paragraph 5 of the decision that it was not reasonable to expect the child to leave the UK. Mr Dhanji had no objection to that approach.
- 8.** I have taken into account the properly made concession by the Secretary of State that there is a material error of law in the decision of the First-tier Tribunal. I take into account the judge’s finding at paragraph 5 that the Appellant has a genuine and subsisting relationship with his son, a British citizen, and it is not reasonable for the Appellant’s son to leave the UK. Therefore there is a material error of law in the judge’s application of the

provisions of paragraph 276ADE and section 117B of the 2002 Act to his findings of fact. I therefore set aside the First-tier Tribunal's decision.

- 9.** There is no challenge to the judge's findings. In these circumstances applying EX.1 and Section 117B(6) the Appellant meets the requirements of EX.1 as he has a genuine and subsisting relationship with a British citizen child and it would not be reasonable to expect the child to leave the UK. EX.1 of Appendix FM reflects the Respondent's position in relation to Article 8 in an application for leave to remain on the basis of a private and family life. Further, in relation to the broader proportionality assessment under Article 8, the weight to be given to the public interest is clarified by the provisions of paragraph 117B of the 2002 Act. Section 117B(6) mirrors EX.1 and accordingly, as the Appellant has a genuine and subsisting parental relationship with a British child and it would not be reasonable to expect the child to leave the UK, it is not in the public interest for the Appellant to be removed from the UK.
- 10.** In these circumstances I re-make the decision in this appeal by allowing the appeal on human rights grounds.

Notice of Decision

- 11.** The decision of the First-tier Tribunal Judge contained a material error of law and I set it aside.
- 12.** I re-make the decision by allowing the Appellant's appeal.
- 13.** No anonymity direction is granted.

Signed

Date: 14th August 2017

Deputy Upper Tribunal Judge Grimes

To the Respondent **Fee award**

I make no fee award as the Appellant's circumstances have changed since the date of the decision made by the Respondent on 13th October 2015.

Signed

Date: 14th August 2017

Deputy Upper Tribunal Judge Grimes