



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

Appeal Number: HU/13912/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 21 April 2017**

**Decision & Reasons Promulgated
On 10 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

**MRS SHABNAM AKHMAD
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Wilding, Home Office Presenting Officer

For the Respondent: Mr A Maqsood of Counsel, MA Solicitors

DECISION AND REASONS

1. The appellant, the Secretary of State, has been granted permission to appeal the decision of First-tier Tribunal Judge Mulholland allowing the respondent's appeal under Article 8 of the ECHR.
2. The respondent is a citizen of the Russian Federation. She was born on 27 August 1992. She entered the United Kingdom on 15 July 2015 on a six

months multientry business visa valid from 29 June 2015 to 29 December 2015. On 29 December 2015 she applied for leave to remain in the United Kingdom under the 10-year partner route. She asserted that she was pregnant. The application was considered under Appendix FM and paragraphs 276ADE of the Immigration Rules, and outside the Rules on the basis of exceptional circumstances. The application was refused on 4 April 2016 for reasons set out in the refusal letter. She was given notice under Section 120 of the Nationality, Immigration and Asylum Act 2002.

3. The respondent opted for a determination of her appeal on the papers.
4. The respondent gave birth to a son, [O] on [] 2016. The judge considered the appeal on the papers at Glasgow on 26 July 2016.
5. In assessing the credibility of the respondent's claim, the judge noted that the respondent was a 23 year old woman who had lived in the UK for a period of twelve months. She met her partner/husband soon after her arrival in the UK and they entered into a whirlwind romance that culminated in the birth of [O] on [] 2016. She noted that the respondent had decided to enter into a relationship with Mansour Osman and have a child after such a short period of time and it seemed unlikely that they were unaware of the fact that her visa was due to expire. The judge held at paragraph 22 that she was satisfied that their infant son was a British citizen or entitled to it as his father was Mansour Osman, a British national.
6. The judge was satisfied that the Secretary of State's decision that the respondent could not succeed under the partner route as she had not been living with her partner for at least two years prior to the date of application was correct.
7. The judge went on to make several adverse credibility findings at paragraphs 24, 25 and 26. She found that the respondent had failed to provide evidence that Mr Osman was in the United Kingdom. She noted the respondent's assertion in her application form and her statement that they lived together at [], Hayes, Middlesex. For the reasons set out at paragraph 25 the judge was not satisfied that the respondent was living with her partner at this address, or that her partner was present in the United Kingdom, or that she was in a genuine and subsisting relationship with him.
8. At paragraph 26 the judge held as follows:

"Mr Osman is named on the child's birth certificate and there are references to him in the appellant's medical records in relation to her pregnancy where he has been described there as the child's father and appellant's second cousin. Despite the adverse credibility findings, the fact that no statement has been lodged by him, that I cannot be satisfied that he is present in the United Kingdom and that the appellant chose not to attend the hearing with him, I am satisfied

that a sufficiency of evidence has been presented to prove on the balance of probabilities that Mr Osman is indeed the child's father."

9. Mr Wilding challenged this finding. He submitted a copy of the British Nationality (Proof of Paternity) (amendment) Regulations 2015 which provides that for birth certificates issued after 20 September 2015, being named as the father on the birth certificate is no longer sufficient proof of paternity. He further argued that in light of the series of negative credibility findings made against the respondent, including the fact that there was no statement from Mr Osman and no evidence that they were in a relationship, the judge nevertheless at paragraph 26 concluded that Mr Osman was the father because on the respondent's medical records in relation to her pregnancy, he was described as the child's father and the respondent's second son and that he was named on the birth certificate. Mr Wilding submitted that this finding was perverse given the litany of adverse credibility findings made by the judge. He submitted that no judge could come to that conclusion on that reasoning coupled with the fact that the finding at paragraph 22 had been unreasoned.
10. On this issue I am in agreement with the submissions made by Mr Maqsood. His submission was that the judge's finding that Mr Osman was the child's father was not entirely based on the fact that his name was on the child's birth certificate. At paragraph 24 the judge noted that the medical records showed that Mr Osman attended only occasionally at hospital with the respondent. At 26 the medical records in relation to her pregnancy described Mr Osman as the child's father and the respondent's second cousin.
11. As it turned out, towards the end of the hearing, Mr Osman, who was in court with the respondent and their child, produced his British passport and a British passport for the child. Copies of the passports were at pages 89 and 90 of the respondent's bundle. For the sake of clarity, the respondent's bundle was not before the judge. Mr Osman was issued with a British passport on 7 October 2015 to expire on 7 April 2026. The child, [O] was issued with a British passport on 13 December 2016 to expire on 13 December 2021. This evidence supported the judge's decision that Mr Osman was British and his son was also a British national. Consequently, I find that the judge's decision that the child was British was not perverse or irrational.
12. Mr Wilding's second argument was that the birth of the child constituted a new matter for the purposes of Section 85(6) of the 2002 Act as amended. It was not an issue decided by the Secretary of State as the decision was made before the child was born.
13. I was not persuaded by this argument. When the respondent made her application, the Secretary of State was aware that she was pregnant; indeed, this was recorded in the Reasons for Refusal Letter. In the circumstances, I find that it was foreseeable that the respondent would

give birth to a child. The judge was considering the appeal under Article 8 of the ECHR, and consequently did not err in law in considering the evidence that was available at the date of the hearing. By the time the judge heard the appeal on the papers the respondent had given birth to the child. That evidence was before the judge and I find she was entitled to consider it in her assessment of the respondent's appeal under Article 8.

14. The next issue the judge considered was the reasonableness test which is set out in paragraph EX.1 and paragraph 276ADE(iv), now echoed in Section 117B(6), which is intended to be a proportionality exercise.
15. The judge found that it was clearly in the child's best interest to remain with his mother. His long-term best interests would be to remain in the UK where he would be able to benefit from his rights as a British citizen. Up to this point I find that the judge did not err in law, having found that because the child is British and therefore is a qualifying child, his best interests clearly remained with his mother. Indeed as at today's date, the child is only 9 months old. Given his tender age, the judge's decision was one that she was entitled to make and disclosed no error of law.
16. I find that the judge erred in law in relying on **Chikwamba** when deciding whether the respondent could return to Russia and make an entry clearance application. **Chikwamba** was not relevant to this case.
17. However, for the reasons given above, I find that the judge did not err in finding that Mr Osman was the father of the child, that the child was a British national by birth and that it would clearly be in the child's best interest at his tender age to remain with his mother in the UK.
18. As I have found no error of law, the judge's decision allowing the respondent's appeal shall stand.
19. No anonymity direction is made.

Signed

Date: 9 May 2017

Deputy Upper Tribunal Judge Eshun