



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/23774/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 15 June 2017

Decision &

Promulgated

On 07 July 2017

Reasons

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

VP

(ANONYMITY DIRECTION MADE)

Appellant

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: Mr P Bonaverio, Counsel instructed by Augustine Clement Solicitors

DECISION AND REASONS

1. In a decision sent on 3 October 2016 First-tier Tribunal (FtT) Judge Eames allowed the appeal of the respondent (hereinafter called “the claimant”), a citizen of the Philippines, against the decision made by the appellant (hereinafter called “the Secretary of State” or “SSH”) refusing leave to remain. The judge found that the claimant was credible; that she now had sole responsibility for her child, D, aged 7; that D is a British citizen and

that it was in D's best interests to remain in the UK; and that it would be unreasonable to expect D to leave the UK. In light of these findings the judge concluded that the claimant met the relevant requirements of the Immigration Rules, concluding at paragraphs 53-55 that:

“53. Since paragraph EX.1 is therefore satisfied, in my judgement, and all of paragraphs E-LTRPT.2.2 to 2.4, and E-LTRPT.3.1 are satisfied, and the respondent accepts anyway that the appellant does not fall for refusal under S-LTR, the result is that she satisfies R-LTRPT.1(d). As well, R-LTRPT.1.1(a) and (b) are plainly met. Section R-LTRPT is therefore satisfied overall. That conclusion is also entirely consonant with the Secretary of State's earlier conclusion – not withdrawn – that it was in Darwin's best interests to remain in the UK, and I find that his best interests do indeed dictate that.

54. None of those conclusions are affected in any way by the admitted impropriety of the appellant's entry to the UK on the false passport, or the fact that she has worked whilst in the UK without status.

55. The appeal is allowed under the parent route of appendix FM to the Immigration Rules.”

2. In her written grounds of appeal the SSHD submitted that the judge failed to consider the issue of the reasonableness of expecting the child D to leave the UK with reference to wider public interest considerations. It was noted that the claimant was an illegal entrant who admits to entering the UK on a passport in another identity and therefore would not meet the status requirements of E-LTRP.3.2. It was submitted that this was contrary to **MA (Pakistan) [2016] EWCA Civ 705**.
3. At the hearing Mr Bramble said that he was in some difficulty in seeking to maintain the SSHD's challenge as set out in the grounds. The SSHD had not challenged the judge's finding that the claimant now had sole responsibility for D and that D's father was no longer involved in his life. In light of that finding, the fact that the claimant did not meet the suitability (or status) requirements of E-LTRP.3.2. was not fatal to the decision to allow the appeal as, in the case of a British citizen child, it was the SSHD's policy that save in cases of criminality or a very poor immigration history such as where the person has repeatedly and deliberately breached the Immigration Rules, it would not be reasonable to expect the child's parents to leave the UK. Mr Bramble said that so far as the claimant's immigration history was concerned it was part of the judge's findings that the claimant's admitted impropriety in entering the UK on a false passport and working unlawfully for three years were not sufficiently adverse factors to outweigh the claimant's right to respect for private and family life. Mr Bramble said that as a result he was not in a position to submit that the claimant fell outside the SSHD's own policy and, in the light of the reported Upper Tribunal decision in **SF and others**

(Guidance, post 2014 Act) [2017] UKUT 120 (IAC), he could not submit that the judge's decision was materially wrong in law.

4. I consider Mr Bramble's submissions pertinent. To my mind the error on the part of the judge in considering that the claimant met the relevant Immigration Rules in full was not material because, on the basis of the judge's own findings, it was inevitable that the claimant, if not able to succeed under the Rules, would succeed outside the Rules by virtue of the compelling circumstance that the SSHD's own policy made clear that someone in the position of the claimant came within the terms of that policy, and hence there was no public interest in the claimant's removal.
5. Even if I had found that the judge materially erred in law I would have then re-made the decision by concluding that the claimant was entitled to succeed on Article 8 grounds outside the Rules by virtue of falling within the SSHD's own policy. I would also have held the claimant met in full the requirements of s. 117B(6) of NIAA 2002.

Notice of Decision

6. For the above reasons I conclude that the judge did not materially err in law and his decision is upheld.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 6 July 2017



Dr H H Storey
Judge of the Upper Tribunal