



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

Appeal Number: HU/01477/2017

THE IMMIGRATION ACTS

Heard at Manchester CJC

On 13 April 2018

Determination

Promulgated

On 17 April 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

KALIL AHMED

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Timson, Counsel

For the respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a citizen of Pakistan, has appealed against a decision of First-tier Tribunal Judge Maxwell dated 16 November 2017, dismissing his appeal on human rights grounds.

Background

2. The appellant entered the UK in 2011 as a student and overstayed beyond the expiry of his visa in 2012. He was encountered by the

immigration authorities in December 2005 and issued with notice that he is an overstayer and should leave the UK. He met his spouse in 2016 and they began living together shortly after this. On 4 April 2017 they got married and reside together with his spouse's son from a previous relationship, M, born in August 2014 and a British citizen.

3. On 10 January 2017 the respondent refused the appellant's human rights claim, and he appealed to the First-tier Tribunal. The First-tier Tribunal made the following findings of fact: (i) the appellant is married and in a genuine and subsisting marriage; (ii) M has established a parental relationship with the appellant. The First-tier Tribunal did not consider or address M's best interests and found that section 117B(6) of the Nationality, Immigration and Asylum Act 2002 did not apply because there would be no expectation of M, as a British citizen child, being expected to leave the UK.
4. In a decision dated 8 January 2018, First-tier Tribunal Judge Gibb granted permission to appeal observing that all the grounds of appeal are arguable.

Hearing

5. At the beginning of the hearing Mr McVeety conceded that the decision contains the errors of law identified in the grounds of appeal, and that the appeal should be remitted to the First-tier Tribunal.
6. Mr Timpson briefly submitted that the First-tier Tribunal's factual findings were sufficient for the appeal to be allowed by me rather than remitted. When I indicated that my provisional view that the factual findings entirely omitted any reference to or consideration of M's best interests and the reasonableness analysis is flawed and in any event inadequate, Mr Timson changed his position to support Mr McVeety's approach that the matter should be remitted to the First-tier Tribunal. I indicated that I would provide a short decision to reflect the agreement that has been reached.

Error of law discussion

7. I entirely agree with the observations of First-tier Tribunal Judge Gibb when granting permission to appeal. In particular, the First-tier Tribunal erred in law in:
 - (1) failing to direct itself to and apply MA (Pakistan) v SSHD [2016] EWCA Civ 705;
 - (2) completely failing to assess M's best interests.

8. In MA (Pakistan) the court also held that section 117B(6) was a self-contained provision in the sense that where the conditions specified in the subsection are satisfied, the public interest will not justify removal. The wider public interests considerations can only come into play via the concept of reasonableness in section 117B(6) itself. The First-tier Tribunal has failed to acknowledge these matters and has misdirected itself.
9. The First-tier Tribunal appears to have alighted on the word "expect" in section 117B(6)(b) to suggest that if there is no expectation of the child leaving the UK then that provision does not bite. However, this is not a permissible reading of the section. To 'hive off' the phrase "to expect" from s.117B(6)(b) is to corrupt the meaning of that subsection. It deprives it of what I consider to be the obvious intention of requiring an objective assessment of the reasonableness of a child leaving the UK. It is either reasonable or it is not reasonable to expect a child to leave. There is a wrong and a right answer. If the proposition relied upon by the First-tier Tribunal is taken to its logical conclusion, it would mean that in a case where there is a genuine and subsisting relationship with a qualifying child where someone is not liable to deportation, the Secretary of State could simply bypass the import of s.117B(6) by stating that she does not expect a qualifying child to leave.
10. These are fundamental errors, which the parties agree, go to the heart of the reasons for dismissing the appeal. Although the First-tier Tribunal has made some findings of fact, the appellant has not benefitted from an assessment of his best interests by reference to the available evidence before the First-tier Tribunal, and it is for this reason that I have decided to remit the matter.

Disposal

11. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement*, the nature and extent of the factual findings required in remaking the decision, and the absence of any factual assessment of M's best interests on the part of the First-tier Tribunal. Having taken all the relevant circumstances into account including the parties' agreement that the matter should be remitted and the overriding objective, I have decided that this is an appropriate case to remit to the First-tier Tribunal.
12. When making its decision, the First-tier Tribunal will of course bear in mind that the relevant policy on the approach to reasonableness where there is a parental relationship with a British child is now contained in updated guidance dated February 2018. It follows that MA (Pakistan) must be read in light of any relevant changes to the policy guidance. In addition, when assessing reasonableness, the First-tier Tribunal will need to consider M's best interests, the nature

and strength of the parental relationship as well as the appellant's very poor immigration history albeit with the benefit of the guidance in MT and ET (child's best interests; ex tempore pilot) Nigeria [2018] UKUT 00088(IAC)

Decision

13. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
14. The appeal shall be remade by the First-tier Tribunal.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
13 April 2018