



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

Appeal Number: HU/04892/2016

THE IMMIGRATION ACTS

Heard at Field House

On 12th March 2018

**Decision & Reasons
Promulgated**

On 20th March 2018

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**HAFIZ AWAIS AHMAD QUERESHI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr A Rehman of Mayfair Solicitors

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Shore promulgated on 26 June 2017, in which Mr Quereshi's appeal against the decision to refuse his application for leave to remain on private and family life grounds dated 2 February 2016 was allowed. For ease I continue to refer to the parties as they were before the First-tier Tribunal,

with Mr Quereshi as the Appellant and the Secretary of State as the Respondent.

2. The Appellant is a national of Pakistan, born on 16 June 1989, who first entered the United Kingdom on 8 April 2011 with leave to enter as a Tier 4 General Student Migrant with leave to remain valid until 11 August 2012. He was granted further leave to remain on the same basis until 30 September 2014. On 22 September 2014, the Appellant applied for leave to remain and varied the application on 28 August 2015 to become an application for leave to remain based on private and family life in the United Kingdom.
3. The Respondent refused the application on 2 February 2016 on the basis that the Appellant did not meet the requirements for leave to remain as a partner in Appendix FM of the Immigration Rules as he was not married to his partner nor had they been cohabiting for the required two-year period. In any event, the Appellant's partner was not a British citizen nor settled in the United Kingdom. The Respondent considered the Appellant's private life under paragraph 276ADE of the Immigration Rules but concluded that there were no very significant obstacles to his reintegration into Pakistan, a country where he had lived for the first 21 years of his life. The Respondent did not consider that there were any exceptional circumstances for a grant of leave to remain outside of the Immigration Rules by reference to his relationship with his partner and her then 10-month-old son who was a British citizen and his best interests.
4. Judge Shore allowed the appeal in a decision promulgated on 26 June 2017 in the following terms, "the Appellant's appeal is allowed in respect of entry clearance as a parent under EX.1(a) under Appendix FM of the Immigration Rules and in respect of entry clearance under Article 8 outside the Immigration Rules". In particular, Judge Shore found the Appellant to be in a genuine relationship with his partner, albeit not satisfying the requirements of the Immigration Rules in Appendix FM, and also that the Appellant was in a genuine and subsisting parental relationship with his partner's son and it would not be reasonable to expect the child to leave the United Kingdom such that the requirements of paragraph EX.1(a) of Appendix FM of the Immigration Rules were met. He further found that he would be unreasonable for the Appellant's partner to return to Pakistan because she was at risk of return there. Overall it was considered that there were exceptional circumstances and the refusal of leave to remain would result in unjustifiably harsh consequences for the Appellant and his partner's son such that removal would be a disproportionate interference with their right to respect for private and family life under Article 8 of the European Convention on Human Rights.

The appeal

5. The Respondent appeals on two grounds. First that the First-tier Tribunal erred in law in allowing the appeal under paragraph EX.1(a) of Appendix FM of the Immigration Rules given that the Appellant could not meet the wider requirements for a grant of leave to remain set out in R.LTRPT.1.1(d)

of Appendix FM, specifically he could not meet those in E-LTRPT.2.3. Secondly, that the First-tier Tribunal erred in failing to give reasons for the findings of a parental relationship and that there would be unjustifiably harsh consequences if the Appellant was removed from the United Kingdom.

6. Permission to appeal was granted by Judge Parks on 29 December 2017 on all grounds.
7. At the hearing, the Home Office Presenting Officer relied on the first ground of appeal as set out in writing and on the general lack of reasons in the decision of Judge Shore such that it remained the Respondent's position that the decision should be set aside. However, the Respondent did accept that the Appellant had a genuine and subsisting parental relationship with his partner's son and that it would be unreasonable for the child to leave the United Kingdom. The Home Office Presenting Officer therefore submitted that the decision should be remade to allow the appeal on human rights grounds by reference to section 117B(6) of the Nationality, Immigration and Asylum Act 2002.
8. There were no substantive submissions on behalf of the Appellant who agreed with the Respondent's submissions and proposed course in this appeal.

Findings and reasons

9. In light of the Respondent's submissions and agreement between the parties as to the outcome in the appeal, I give only brief reasons for my findings as follows.
10. I find that Judge Shore materially erred in law in two respects in the decision under appeal. First, he allowed the appeal under paragraph EX.1 of Appendix FM of the Immigration Rules despite the fact that this was a human rights appeal which could only therefore be allowed or dismissed on human rights grounds and not specifically by reference to any particular provision of the Immigration Rules (however of course satisfaction of those rules would be relevant to an assessment under Article 8). The appeal was also allowed by reference to entry clearance which is misconceived as this was an in country right of appeal where the Appellant had been lawfully in the United Kingdom since April 2011. Further, Judge Shore failed to recognise in any event that paragraph EX.1(a) in Appendix FM is not of itself a freestanding requirement further to which leave to remain could be granted, but one of three separate requirements for leave to remain as a parent set out in R-LTRPT.1.1(d) of Appendix FM, not all of which could be met by the Appellant.
11. Secondly, the decision states a number of conclusions for which little or no adequate reasons are given, including as to the relationships between the Appellant and his partner and her son; the reasonableness of his partner's return to Pakistan based on being at risk of return when there was nothing to suggest that she had even made an asylum claim, concluding that there would be unjustifiably harsh consequences in the

Appellant's removal and in referring to findings of exceptional circumstances in an earlier paragraph in the decision which contained no such findings at all. The failure to give adequate reasons for the findings made and for allowing the appeal is a material error of law. For these two reasons it is necessary to set aside the decision of Judge Shore and for the decision to be remade.

12. In light of the clear concession by the Respondent that on the facts she is satisfied that the Appellant has a genuine and subsisting parental relationship with his partner's son and that it would be unreasonable for the child to leave the United Kingdom such that section 117B(6) of the Nationality, Immigration and Asylum Act 2002 applies, it is not necessary for me to consider further the evidence in this appeal or make any specific findings. I accept the Respondent's submissions on the facts and allow the appeal on human rights grounds as the Appellant's removal from the United Kingdom would be a disproportionate interference with his right to respect for private and family life under Article 8 European Convention on Human Rights by reference to section 117B(6) which states that the public interest does not require a person's removal where he has a genuine and subsisting parental relationship with a qualifying child (in this case a British citizen) and it would not be reasonable to expect the child to leave the United Kingdom.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remake the decision under appeal.

The appeal is allowed on human rights grounds.

No anonymity direction is made.

Signed



Date

12th March 2018

Upper Tribunal Judge Jackson