



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/27663/2016

THE IMMIGRATION ACTS

Heard at Liverpool  
On 5 June 2018

Decision promulgated  
On 30 July 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

KAFEEL MUNIR  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Jagadeshm instructed by Silverdale Solicitors  
For the Respondent: Mr Diwnycz Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 16 January 2018, sitting at Manchester, the Upper Tribunal found the First-tier Tribunal had materially erred in law in a determination promulgated on 19 June 2007 dismissing the appellant's appeal against the refusal of an application for leave to remain in the United Kingdom on the second ground of the applicant's challenge. Directions were given for the provision of further evidence leading to the matter being listed today for a further hearing after which the Upper Tribunal shall substitute a decision to either allow or dismiss the appeal.

Discussion

2. The appellant is a citizen of Pakistan married to a Mrs Shazia Khan, a British citizen. They have a child together born in the United Kingdom on 29 October

2011 who is a British citizen. Mrs Khan has three children from a former marriage born on 8 October 2000, 17 October 2001 and 14 November 2002 all of whom are British citizens. The appellant's case is that his wife and the children live together as a family unit in the same property in the United Kingdom.

3. The appellant relies upon section 117B(6) of the Nationality, Immigration and Asylum Act 2002 which provides that in the case of a person who is not liable for deportation, the public interest does not require the person's removal where (a) the person has a genuine and subsisting parental relationship with a qualifying child, and (b) it would not be reasonable to expect the child to leave the United Kingdom.
4. It is argued that this test is satisfied in relation to the appellant's relationship with the daughter he has with his wife at the very least, in addition to the other children.
5. When considering whether it is reasonable to expect the appellant's daughter to leave the United Kingdom the starting point has to be consideration of the child's best interests followed by an assessment of the public interest in removal following the decision of the Court of Appeal in MA (Pakistan) [2016] EWCA Civ 705.
6. In relation to the British national daughter expecting the child to leave the United Kingdom will deny the child the ability to enjoy her rights as a British citizen, the country she has lived in all her life. The child will attain the age of seven on 29 October 2018. It also appears to be the case on the evidence that if the child were to relocate to Pakistan with her father she would do so without her siblings as they are British citizens who have lived in the UK since birth and are now aged 17, 16 and 15, and it is not suggested or made out that they should relocate to Pakistan. This is an important consideration for the appellant's child, given her age, is likely to be a person whose focus is predominantly on her family.
7. A further dilemma arises in that if the child went to Pakistan with her father her mother would have to stay behind as the mother will be faced with an impossible choice between her three children in the United Kingdom or leaving the three children to go with her daughter to Pakistan.
8. Mr Jagadeshm referred to the poor security situation in parts of Pakistan too.
9. The appellant also refers to the respondent's policy "Family Migration, Appendix FM section 1.0b, Family Life (as a Partner or Parent) and Private Life; 10-year route" (22 February 2018) which notes the following in respect of the circumstances which it is envisaged would justify a refusal to grant leave to a parent, where a British child is involved:

"In particular circumstances, it may be appropriate to refuse to grant leave to a parent or primary carer where their conduct gives rise to public interest considerations of such weight as to justify their removal, where the British Citizen child could remain in the United Kingdom with another parent or alternative primary carer, who is a British citizen or settled in the UK will who has or is being granted leave to remain. Circumstances envisaged include those in which the grant of leave could undermine our immigration controls, for example the applicant has committed significant or persistent criminal offences falling below the threshold of deportation set out in paragraph 398 of the Immigration Rules or has a very poor immigration history, having repeatedly and deliberately breached the Immigration Rules"

10. There is no suggestion the applicant has behaved in such a way that his presence in the United Kingdom is not conducive to the public good. Even though the First-tier Tribunal did not find the appellant and his wife have a genuine or subsisting relationship and it was not possible for the finding to be found to be infected by arguable legal error, the fact of the matter is the parties have a child together and evidence provided for the purposes of the resumed hearing strongly indicates that the appellant, his wife, and the children of the family live together in a complete family unit.
11. It is not disputed the appellant is working and speaks English and that no reliance is placed upon public funds.
12. Mr Diwnycz accepted this is a family splitting case, chose not to cross examination the appellant on his evidence, and sought to rely upon the original decision. When considering section 117B(6) it was accepted there was no challenge by the respondent to the existence of the requisite parental relationship or the family dynamics in this family unit or their living together. It was accepted on the respondent's behalf that in this context it will be unreasonable for the qualifying child to leave the United Kingdom. It was also accepted it will be unreasonable (and therefore disproportionate) in all the circumstances to expect the appellant to leave the United Kingdom and, accordingly, I find the appeal must succeed.

**Decision**

13. **I remake the decision as follows. This appeal is allowed.**

Anonymity.

14. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated the 20 July 2018