



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

Appeal Number: HU/11101/2017

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 27 March 2019**

**Determination Promulgated  
On: 10 April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR TA  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mrs Willocks-Briscoe, Senior Presenting Officer

For the Respondent: Mr Janjua of Counsel

**DECISION AND REASONS**

1. The appellant before the Upper Tribunal is the Secretary of State for the Home Department and the respondent is a citizen of and Pakistan born on August 1989. However, for the sake of convenience, I shall continue to refer to the latter as the “appellant” and to the Secretary of the State as the “respondent”, which are the designations they had in the proceedings before the First-tier Tribunal.
2. The appellant appealed to the First-tier Tribunal against the decision of the respondent dated 12 September 2017 refusing his application for indefinite leave to remain pursuant to Appendix FM as a partner of a

British national. The appellant has two children born on 11 February 2015 and 9 January 2017.

3. Permission to appeal was granted by First-tier Tribunal Judge Cruthers on the 7 June 2018 stating that it is arguable that the Judge was not properly entitled, in law, to allow this appeal-especially if the relevant factors set out in Part 5 of the Nationality, Immigration and Asylum Act 2002 are properly factored in.
4. Thus, the appeal came before me.
5. The first-tier Tribunal Judge allowed the appellant's appeal and stated that despite the lack of documentary evidence, he accepts that the relationship between the appellant and his wife is genuine and subsisting. They have two children together and they were consistent in their accounts as to how they travelled to the United Kingdom, and this, together with the documentary evidence provided established their genuine relationship. The respondent's concern is that the appellant's wife is claiming 25% single person's allowance that she receives which means that they are not living together. However, they are in a genuine and subsisting relationship.
6. Although the appellant is living in the United Kingdom in breach of the immigration laws, EX1 may be applied to him. The children are three and one years of age and are fully focused on their parents who are responsible for their physical, emotional, social and economic well-being. It is in the best interests of the children to remain with their parents and live with them even though they are British nationals which is not considered to be a trump card. The children have relatives in Pakistan. The appellant can work in Pakistan provide and for his family.
7. They lived in Attock in Pakistan and the appellant claims that it is not safe to take the children there. However, the appellant's wife did return there after the birth of her first child and took that child with her. She also returned there to marry the appellant. The Judge did not find credible the appellant's wife's evidence that she travelled at night and returned before sunrise. The Judge found that although the appellant that his wife come from Attock, there is nothing to prevent them from relocating to another part of Pakistan such as Rawalpindi.
8. The Judge stated that the children are qualifying children as they are British citizens because their mother is a British citizen. The appellant has a genuine and subsisting relationship with them. The question that remains is, the Judge stated, is whether it would be unreasonable for the qualifying children to return to Pakistan with the appellant. The Judge noted that the appellant has never had leave to remain in the United Kingdom. He further noted that the appellant chose to circumvent the requirements of the immigration rules by entry into the United Kingdom via Ireland. He also stated that the appellant has not established that his wife ever worked in Ireland.

9. However, the Judge found that appellant's immigration history demonstrates that he has only breached immigration laws, at most, on two occasions. The first was his entry to the United Kingdom via Ireland and then by choosing to stay in the United Kingdom without leave. These two occasions cannot reasonably be characterised as reaching the immigration rules "repeatedly" as claimed by the respondent. Therefore, his conduct is not sufficiently weighty, when assessed with the respondent's own policy, to find that it is reasonable to expect the appellant's children to go to Pakistan with him. The appellant is therefore entitled to succeed under the provisions of EX 1 (a).
10. The Judge having said that the appellant succeeds under the provisions of EX 1 nevertheless went on to consider proportionality under Article 8 and respect of section 117B of the Nationality, Immigration and Asylum Act 2002. He then allowed the appeal under Article 8 of the European Convention on Human Rights.
11. The respondent's grounds of appeal state that the Judge failed to give adequate reasons for allowing the appeal. In considering the public interest, and the reasonableness of the children's returned to Pakistan the Judge ignored that the relationship had no documentary evidence such as council tax bills and the appellant's sponsor's single person allowance is at odds with the Judges findings that they are in a subsisting relationship. The Judge finds that there would be nothing stopping the appellant and his family relocating to another part of Pakistan.
12. The second ground of appeal is that the Judge made a material misdirection in law. The Judge failed to give adequate consideration to 117B of the 2002 Act. The Judge found that the appellant had never had any leave in the United Kingdom and tried to circumvent the requirements of the immigration rules. The Judge did not carry out the balancing exercise appropriately. He said that being British citizens cannot be a trump card and the fact that one of the children returned with their mother to Pakistan shows that there is family support for the family in Pakistan. The Judge has not articulated why in all the circumstances it would be not reasonable for the family to relocate to Pakistan.
13. I find that the decision of the first-tier Tribunal Judge is not safe and has a material error of law. The Judge did not give adequate reasons in light of his own findings for why the appellant and his family cannot return to Pakistan. The Judge also did not resolve the discrepancy in the evidence that the appellant's wife is claiming a single supplement and therefore his finding that there are in a genuine and subsisting relationship is materially flawed. I find that anxious scrutiny has to be applied in light of the respondent's grounds of appeal.
14. I therefore remit the appeal to First-tier Tribunal for findings of fact to be made. I direct that the appeal be listed before any Judge other than Judge Robertson for a hearing de novo.

## **DECISION**

The appeal be remitted to the First-tier Tribunal.

Signed by

Mrs S Chana  
A Deputy Judge of the Upper Tribunal

Dated this 7<sup>th</sup> day of April 2019