



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01009/2016

THE IMMIGRATION ACTS

Heard at Field House
On 31 May 2019

Decision & Reasons Promulgated
On 20 June 2019

Before

UPPER TRIBUNAL JUDGE BLUM
UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

NM
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Adewoye of Prime Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a remade decision following the identification of a material error on a point of law in the decision of Judge of the First-tier Tribunal A.M.S. Green (the judge), promulgated on 21 June 2017, dismissing the appellant's appeal against the respondent's decision dated 5 February 2016 refusing her Article 8 human rights claim.

Background

2. The appellant is a national of Pakistan, born in 1982. She entered the UK as a student on 6 June 2012 with leave valid to 15 August 2013, although her leave was subsequently curtailed to end on 29 July 2013. In 2012 she formed a relationship with QI, also a citizen of Pakistan, and they had a child, AK, born in July 2013. There is no clear evidence as to how long QI has resided in the UK. A decision of the First-tier Tribunal dismissing an appeal brought by QI against a refusal to grant him leave to remain, promulgated on 30 November 2018, referred to his residence in the UK since May 2000, but in his statement dated 15 March 2019 he said he last arrived in the UK in 2006. He was sentenced to 15 months imprisonment on 6 August 2006, but had been granted Discretionary Leave to Remain between 2011 and 2014, although he was refused leave to remain on 19 February 2018. At the time the appellant formed a relationship with QI he was residing with Discretionary leave.
3. Following the expiry of her leave the appellant made two applications for leave to remain based on her private and family life, but these were refused. A further application was made on 17 July 2014 under the 10-year route contained in Appendix FM of the immigration rules.
4. The respondent refused the application on the basis that the appellant failed to meet the Suitability requirements because she used a proxy tester in respect of an English-language test overseen by Educational Testing Services (ETS). Nor did the appellant meet the Eligibility requirements of the immigration rules because neither she nor QI, nor her daughter were British citizens, or settled in the UK, or in the UK with refugee leave or Humanitarian Protection. Nor was the respondent satisfied there would be very significant obstacles to the appellant's return to Pakistan under paragraph 276ADE(1)(vi).
5. In considering whether there were any exceptional circumstances such as to entitle the appellant to a grant of leave to remain outside the immigration rules on Article 8 grounds, the respondent noted that the appellant's relationship with QI commenced in the knowledge that her immigration status was precarious and that it was open to her to return to Pakistan and apply for the correct entry clearance if she chose to do so. The respondent noted the appellant's claim that QI had contact with H, his child from a previous relationship born in 2004, but concluded that the refusal of the application did not oblige QI "and children" to leave the UK. The respondent noted the appellant's claim to fear her family in Pakistan because of her relationship with QI and the circumstances of the birth of their child but indicated that, if the appellant was in fear of her life, this would constitute an asylum or Article 3 application and had to be made in person at an Asylum Screening Unit. The appellant exercised her right of appeal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).

The decision of the First-tier Tribunal

6. The appellant produced a bundle of documents for her appeal before the First-tier Tribunal included statements from her and QI, a copy of H's birth certificate, and a copy of the Contact Order issued under Section 8 of the Children Act 1989 by the Romford County Court relating to QI's contact with H. The statement from QI confirmed that H was his British citizen child, born in 2004. No issue arose at the remade hearing as to H's nationality. H resided with her biological mother (QI's ex-wife, SP) but he had regular contact with H pursuant to the Contact Order. There was also a statement from SP signed and dated 29 July 2017, and a copy of her British passport.
7. In their oral evidence before the judge the appellant and QI claimed that he had a very close relationship with H, that he financially supported her by way of child support, and that he was currently awaiting a decision in respect of his application for further leave to remain, which was based on his relationship with H. This evidence was supported by a statement from QI's ex-wife. QI said that he could not relocate to Pakistan as we saw H every weekend.
8. The judge was not satisfied that the respondent had discharged the burden of proof in demonstrating that the appellant used a proxy tester for her English language certificate. There has been no challenge to this finding and this was confirmed by the Presenting Officer at the 'error of law' hearing. Mr Whitwell did not seek to reopen this aspect of the First-tier Tribunal's findings.
9. The judge accepted that the appellant had family life with QI and AK, and that there was "some family life" between the appellant and H. The judge noted that H lived with her mother, and reference was made to the Contact Order regulating QI's contact with H. The judge found that the appellant could not meet the requirements of EX.1 because of QI's immigration status (he only had limited leave to remain), and that, pursuant to paragraph 276ADE(1)(vi), there were no 'very significant obstacles' to her integration in Pakistan. The judge was not satisfied there were compelling circumstances to allow the appeal outside the immigration rules and dismissed the appeal on human rights grounds.

The making of an error on a point of law

10. The grounds upon which the appellant sought permission to appeal to the Upper Tribunal lacked adequate focus and variously contended that the judge erred in his assessment of the appellant's private life, that the judge failed to exercise anxious scrutiny when assessing, *inter alia*, QI's relationship with his British citizen daughter, that the judge's decision was based on "conjecture, biasedness, and unfairness", that the judge failed to consider that, if returned to Pakistan, the appellant's parents would kill her, and that the judge failed to consider the best interests of the children.
11. The grant of permission to appeal by a judge of the First-tier Tribunal was equally lacking in focus. The First-tier Tribunal was however clearly concerned

by the judge's failure to consider article 8 outside of the immigration rules. The First-tier Tribunal also granted permission in respect of the failure by the judge to 'factor in' the appellant's claimed fear of return to Pakistan. We pause at this point to observe that no protection or Article 3 claim has ever been made by the appellant and that it would be entirely inappropriate for an appeal on protection grounds to be entertained by the backdoor.

12. At the outset of the 'error of law' hearing the Upper Tribunal indicated to both parties its concern that there was no adequate assessment of the impact of the decision on the relationship between QI and his daughter H, or between AK and H, and that there was no assessment of H's best interests. If the appellant was required to return to Pakistan with her daughter, QI would either have to remain in the UK in order to maintain his relationship with H, or he would have to relocate to Pakistan with the appellant and AK in order to maintain the integrity of his immediate family unit, which was likely to have a profound impact on his relationship with H (and her relationship with her biological father). Mr Avery, the Presenting Officer at the 'error of law' hearing, indicated his broad agreement, as did Mr Adewoye. The Upper Tribunal indicated to both representatives that it was satisfied the decision contained an error on point of law requiring it to be set aside, and that the Upper Tribunal would remake it at a further hearing to enable the parties to provide further evidence of QI's relationship with H and the consequences for that relationship and QI's relationship with the appellant if she had to return to Pakistan without him. In a decision promulgated and sent to the parties on 20 November 2018 the Upper Tribunal gave detailed findings for its decision.

Further evidence served for the hearing to remake the decision

13. The appellant provided a further bundle of documents running to 140 pages. This included, *inter alia*, a skeleton argument, further statements from the appellant and QI, a Child Support Agency letter dated 26 May 2017 addressed to QI relating to child maintenance, some medical documents relating to both the appellant and QI, letters from H's school confirming that QI was an emergency contact, and photographs of QI, H and AK. The further bundle additionally contained an Independent Social Worker (ISW) report prepared by Cynthia Kelchure-Cole and date 15 March 2019.
14. The ISW observed AK and H interacting with each other at the appellant's family home, and the interaction between QI and H. The ISW did not formally interview H "... due to the fact that she is unaware her father, stepmother and sister's risk of deportation." The appellant and QI expressed concerns to the ISW about H's emotional well-being as they felt she had experienced trauma during her parents' divorce and had been emotionally upset when contact was lost with her father until the conclusion of the Section 8 Family Court Proceedings.
15. The social worker wrongly stated, at 6.1, that H was 16 years old. She also wrongly stated, at 4.2, that H was 15 years old. H was in fact 14 years and 5

months old at the date of the ISW's report. The ISW stated that H has regular contact with her father and half-sister, although the source for this assertion is not identified. QI told the ISW that his contact with H was more flexible than that noted in the Family Court Order and that if H's mother was, for example, unable to take her to an activity either he or the appellant would do so. The ISW observed H approaching the appellant and giving her a hug and kissing each other. This suggested that H was familiar with the appellant and AK.

16. H informed the ISW that she had a good relationship with AK and that H enjoyed spending time with everyone at her father's home. H told the ISW that she got on well with the appellant, whom she called "auntie". The ISW observed H and AK to have an "affective attachment" (an emotional connectedness). According to the ISW, H and AK had an "exceptional sister to sister bond, and that separation would cause them more than the expected distress of separation, the separation could lead to challenges with their mental well-being for each child." The ISW found that H had a secure relationship with QI. The ISW referred to research indicating that separation of a child from one of his or her parents can lead to feelings of abandonment and generate trust issues, and that parental accessibility was important for the development of social, emotional and behavioural functioning of children. In her professional opinion the ISW found that separation of the family may have a negative impact on the social and emotional well-being of both H and AK.
17. In her statement dated 15 March 2019 the appellant said that QI had Discretionary Leave to Remain in the UK and was hopeful that he would soon be granted Indefinite Leave to Remain (this was inaccurate as QI had not applied for ILR but only a grant of further leave to remain, but the inaccuracy has no material bearing on our decision). An application lodged by QI for leave to remain was refused on 19 February 2018 and an appeal to the First-tier Tribunal was dismissed on 30 November 2018. QI had been granted permission to appeal to the Upper Tribunal and an 'error of law' hearing took place on 12 March 2019.
18. In a decision promulgated on 25 March 2019 Dr H H Storey, Judge of the Upper Tribunal, allowed QI's appeal. Dr Storey noted the acceptance by the Secretary of State that QI had a genuine and subsisting relationship with H. Having found an error on a point of law in the First-tier Tribunal's decision, Dr Storey re-made the decision concluding that QI satisfied the requirements of s.117B(6) of the 2002 Act. Dr Storey found it was not reasonable to expect H to leave the UK, and as QI had a genuine and subsisting relationship with H, the appeal was allowed on human rights grounds. Dr Storey did however state,

"I would point out that, had I not felt bound by the proper statutory construction of Section 117B(6) to apply it and so then be engaged in an unvarnished proportionality assessment outside the Rules, I would have reached a different conclusion. The proportionality assessment outside Section 117B(6) pointed strongly against [QI]. His immigration status was precarious. He had a criminal conviction and a fifteen-month custodial sentence imposed in September 2006 which although now over 13 years

ago is a factor pointing to a public interest in his departure. Although the respondent accepted that the appellant had a genuine and subsisting relationship with the child, on the judge's findings the contents of this relationship was thin. There was a dearth of evidence relating to the appellant's personal family circumstances with his present wife NM. But for the Section 117B(6) issue therefore I would have concluded that the judge had sound reasons for concluding that the appellant could not succeed on the basis of Article 8 outside the Rules."

19. At the hearing further letters from AK's school (a Jewish Primary School) were provided, as well as a further statement from SP, dated 20 March 2019 in which she outlined the regular contact between QI and H, and confirmed the relationship between H and AK. SP additionally confirmed that she received £120 every month from QI as child maintenance. Several certificates relating to AK were provided, as was an article relating to a Jewish resident of Pakistan and another article on Pakistan's blasphemy laws. Also provided were extracts from a Country Report on Pakistan issued by the Asylum Research Centre in June 2018. Mr Whitwell provided a police printout of a PNC record relating to QI indicating that a Domestic Violence Protection Notice (DVPN) was served on him at Romford Police Station on 1 July 2018. It prohibited QI from molesting the appellant or entering the address provided by both him and the appellant, and it prohibited him from requiring the appellant to leave that address. The start date of the order was '20/07/18', and the end date was '20/07/21'.

The hearing

20. We summarise the salient features of the statements upon which the appellant and QI relied, and their oral evidence. In her statement the appellant described H being like her "1st child" and confirmed that QI had a genuine and subsisting relationship with H. She described her estrangement from her family in Pakistan because of her relationship with QI and claimed to fear them on return. She described H and AK as having a "special bond" and that she and AK would see H regularly and frequently. The appellant feared that her removal would be very upsetting for H and that it would break up the established relationship between H and AK. She described how QI financially supported H and how they loved each other. He had a shop in Ilford selling and fitting tyres. The appellant believed it would be difficult for AK to enrolled in a school in Pakistan as she was attending a Jewish school in the UK. There was no guarantee that H would be allowed to visit QI and AK in Pakistan and the fares would be unaffordable. The appellant maintained that she had committed no crime in the UK.
21. In her oral evidence the appellant confirmed that the police were called to an incident at the family home on 1 July 2018, and that, as a consequence, QI was banned from the family home for 4 weeks. She did not believe she was at any risk of harm from QI now. The appellant confirmed the strong relationships between her and QI, between QI and H, and between H and AK. The appellant

also confirmed that she had a strong relationship with H. The appellant further described her concern for AK's safety if it became known that she attended a Jewish school in the UK. The appellant believed that, in order to enrol AK in a Pakistani school she would need to disclose AK's previous school records. The appellant confirmed that she was not legally married to QI.

22. In cross-examination, and with reference to a letter dated 17 May 2017 issued by the Homerton University Hospital, the appellant explained that a reference to her having a "previous history of domestic violence" related to an incident where QI tightly held her jaw during an argument when she was pregnant. It was because of this previous incident that the DVPN was issued. The appellant described receiving a phone call from the police or a court shortly before the DVPN expired enquiring whether she wanted to pursue the DVPN, and she answered in the negative. The appellant could not remember what the argument on 1 July 2018 was about. Having given several reasons why AK had enrolled in a Jewish primary school the appellant claimed to see H every weekend as well as the holidays. She also sometimes saw H during the week, and H sometimes stayed overnight. H's mother was trusting, and H would come on family outings whenever she wanted to.
23. In his statement QI confirmed that he was in a genuine and subsisting relationship with the appellant and that they had a child, AK, born in July 2013. He confirmed that he loved both his children and that he was "very instrumental to their well-being." If the appellant's application was refused this would affect the welfare of his children. He claimed to have been away from Pakistan for close to 13 years, had no support structure in that country, and he had a brother in the UK. In oral evidence he confirmed that he was not allowed to enter the family home or weeks in accordance with the DVPN. He could not remember what the argument in 2018 was about. There had been no further arguments since the imposition of the DVPN. QI denied threatening the appellant in order for her to write her statement, and he denied her to come to the Tribunal. He confirmed that he had never been charged with an offence relating to domestic violence. If the appellant was unsuccessful in her appeal he would not relocate with her to Pakistan as he had his daughter, H, in the UK, whom he saw every week, and sometimes twice a week. He and H had a strong attachment to each other. QI described the relationship between the appellant and H, and AK and H as being very strong. QI expressed concerns for AK if she really relocated to Pakistan because of the security risks and because she attends a Jewish school.
24. In cross-examination QI also expressed concern for AK's safety as she was born out of wedlock. QI confirmed that he was still in a relationship with the appellant. Prior to 2013 he was unable to have unsupervised contact with H because her mother thought that he would try and take her to Pakistan.
25. Before he commenced his submissions, we informed Mr Whitwell that we had considered the relevant legislation relating to the issuance of DVPNs. A DVPN can be issued under section 24 of the Crime and Security Act 2010. Following

the service of a DVPN, there must be a police application to a magistrate's court for a Domestic Violence Protection Order. Should a Magistrates Court grant the Order, it will run for no less than 14 days and no more than 28 days. We put our concerns regarding the asserted end date of the DVPN, as referred to in the PNC printout, to Mr Whitwell. We gave Mr Whitwell an opportunity to respond to our concerns. He indicated that he had sufficient opportunity to respond to our concerns and had nothing further to add. There was no application to adjourn the hearing by Mr Whitwell.

26. Both representatives made submissions which are a matter of record and which we have carefully considered. We reserved our decision.

Findings of fact and conclusions

27. We remind ourselves that, in an appeal revolving around private and family life relationships, the burden rests on the appellant to demonstrate, on the balance of probabilities, that the refusal of her human rights claim would breach rights protected under Article 8 ECHR.
28. We find the appellant does have a genuine and subsisting family life relationship with QI and their daughter, AK. We reached this conclusion primarily based on the assertions relating to the relationships contained in the statements from the appellant and QI, their oral evidence, and the ISW's report. The appellant gave her evidence in a forthright manner, and her account of her relationship with QI was consistent with his evidence and with the ISW's report, and internally consistent. The fact that she and QI remain living together and have a 5-year-old daughter is itself strong evidence that the relationship is genuine and subsisting. The observations of the ISW relating to QI's interaction with the appellant and AK have not been challenged, and the subsistence of the relationships are further reinforced by reference to the unchallenged documentary evidence of cohabitation and the letters from AK's school.
29. We have very carefully considered the evidence relating to domestic abuse. We are satisfied that the appellant was subjected to domestic abuse from QI and that he was required to leave the family home for 4 weeks. We reach this conclusion by reference to the PNC printout, an NHS letter dated 17 May 2017 relating to the appellant and referring to a previous history of domestic violence, and from the oral evidence of both the appellant and QI. We do not find the reference to "end date" of the DVPN in the PNC is accurate. Having regard to the legislative framework governing the issuance of DVPNs (and DVPOs), considered at paragraph 25 of this decision, we are satisfied there is no statutory basis allowing the police, or indeed a magistrate's court, to impose a Notice of Order of 3 years duration. The infliction of domestic abuse is an abhorrent act, and a factor that we strongly take into account when assessing the public interest factors in our Article 8 proportionality assessment. We do not however find that the past infliction of domestic violence means that the appellant and QI are not now in a genuine and subsisting relationship. There was nothing in the evidence

before us to suggest that the appellant was currently in an abusive relationship or that she was being coerced into giving her evidence. There has been no expressed concern that QI poses any danger to AK or H. On the contrary, the overwhelming evidence suggests that QI has a strong parental relationship with both his children.

30. We are in no doubt that QI has a genuine and subsisting parental relationship with H. In his decision under appeal before Upper Tribunal Judge Storey, the Secretary of State himself accepted that QI had a genuine and subsisting relationship with H. This was confirmed by the First-tier Tribunal judge. We note that Judge Storey, in the extract set out in paragraph 18 of this decision, referred to the First-tier Tribunal judge finding the content of QI's relationship with H to be "thin." We have had the benefit of the IWS's report, which was not available to the First-tier Tribunal, and we have considered further statements from H's mother, as well as the statements and oral evidence from the appellant and QI. The descriptions given by both the appellant and QI of his relationship with H was consistent with the ISW's observations and with the statement from H's mother. Having considered this evidence 'in the round', together with the letter from H's school and the evidence of child support payments, we find that QI does see H on a regular basis, at least once a week, that H sometimes stays with QI during the holidays, and that they have a close familial bond. Although Mr Whitwell asked the witnesses several questions concerning point 1 of the Contact Order issued in April 2013, which allowed QI unsupervised contact with H for 3 hours on alternative Sundays, we drew his attention to point 4, which allowed for "further and other contact as can be agreed between the parties."
31. We additionally find, by reference to the same evidence, that H and AK have a strong half-sibling relationship. They see each other frequently, and, according to the unchallenged evidence from the ISW, they have an "affective attachment" and an "exceptional sister to sister bond."
32. We do not find that the appellant has a parental relationship with H. H has her two biological parents who care for her and ensure her safety and welfare. We do however find that there is a strong private life relationship between the appellant and H. This is apparent from the evidence from the appellant, who described H as being like her "first child", and from the observations from the ISW, who recalled H saying that she got on "really well" with the appellant and that she could talk to the appellant about most things without judgment.
33. In determining the best interests of both AK and H, pursuant to s.55 of the Borders, Citizenship and Immigration Act 2009, we have applied the guidance given in **EV (Philippines) & Ors v Secretary of State for the Home Department** [2014] EWCA Civ 874 (at [35]), and **Azimi-Moayed and others (decisions affecting children; onward appeals)** [2013] UKUT 00197. We are grateful to Mr Whitwell for his acceptance in his submissions that the best interests of both children are for the appellant and AK, together with QI, to remain in the UK. This is a conclusion we would, in any event, have reached. H and AK have a

strong half-sibling relationship, and the removal of the appellant and AK, whilst not severing the relationship (they could communicate remotely or by periodical visits), would clearly have a significant adverse impact on their close emotional bond. If QI chose to remain in the UK, AK would be deprived of the presence of one of her parents, who has joint parental responsibility for her. As noted in the ISW's report, this would have a profound impact on her emotional and behavioural development, a point we consider to be self-evident. If QI chose to relocate to Pakistan, H would, similarly, be deprived of her close relationship with her father. This would also likely lead to an adverse impact on her social, behavioural and emotional development. In making our findings relating to the best interests of both children we take account of their ages, their length of residence in the UK, the fact that H resides with her mother, and their state of health and the stage of their education.

34. We can deal with this appeal, so far as the immigration rules are concerned, relatively briefly. The only private life basis under paragraph 276ADE conceivably open to the appellant is paragraph 276ADE(1)(vi). We find there are no very significant obstacles to the appellant's relocation, with AK, to Pakistan. The appellant has lived in Pakistan for most of her life and would be familiar with the culture, the language and the way of life. AK is only 5 years old and is still at primary school. The appellant would be able to support AK through any initial difficulties on relocation. Despite fearing her family because she entered into a relationship against their wishes, the appellant has not made a protection claim. In any event, and taking her claim at the highest and having regard to **SM (lone women - ostracism) Pakistan** [2016] UKUT 00067 (IAC), she is a highly educated woman who could relocate to another part of Pakistan where she could find employment or be supported by QI, who works in the UK. AK has not lived in the UK for a continuous period of at least 7 years and cannot succeed under paragraph 276ADE(1)(iv). Nor are we persuaded that AK would face any significant difficulties because she has attended a Jewish primary school in the UK. The limited background evidence provided by the appellant did not support her claim that she would need to disclose AK's educational background, or that, even if she did, this would expose AK to any risk of harm or ill-treatment. Nor are we satisfied that the appellant or AK can meet any of the requirements of Appendix FM given QI's immigration status and AK's residence for less than 7 years.
35. In determining the appeal outside paragraph 276ADE and Appendix FM we must consider whether there are compelling or exceptional circumstances in accordance with Article 8 principles (**SSHD v SS (Congo) & Ors** [2015] EWCA Civ 387).
36. We have considered the public interest factors in s.117B. We note that the appellant cannot meet the requirements of the immigration rules. This is relevant to the public interest in the maintenance of effective immigration controls (s.117B(1)). Having heard the appellant give evidence, we are satisfied she is sufficiently proficient in English, and that she is financially independent by reference to QI's employment and income (**Rhuppiah** [2018] UKSC 58).

These are however neutral factors. The appellant's relationship with QI, who does not meet the definition of qualifying partner in s.117D, was commenced when her immigration status was precarious, and her private life was established when her immigration status was precarious. We therefore attach little weight to her private life, and we also reduce the weight we attach to the appellant's relationship with QI and H because both were entered into when the appellant's immigration status was precarious. The appellant cannot avail herself of s.117B(6) because AK is not a qualifying child, and because the appellant does not have a subsisting parental relationship with H.

37. We additionally take account of QI's conduct and immigration history when assessing the public interest. We note that QI had a criminal conviction and a 15-month custodial sentence imposed in September 2006, and that he previously inflicted domestic abuse against the appellant. Both factors point to the public interest in his separation from the appellant and AK, should he choose to remain in the UK. We note however that the conviction is now almost 13 years old, that he has not been convicted of any further offence, and that he and the appellant have salvaged their relationship since the infliction of domestic abuse. Given the unchallenged findings of the First-tier Tribunal, there are no Suitability requirement factors relevant to the appellant.
38. In undertaking the proportionality assessment, we treat the best interests of both H and AK as a primary consideration. The best interests are not however a paramount consideration and can be outweighed by a combination of other public interest factors.
39. Following the decision in QI's appeal to the Upper Tribunal, there would be a disproportionate interference with Article 8 if he leaves the UK because he has a genuine and subsisting parental relationship with H, and because it is not reasonable for H to leave the UK. This follows from the decision in **KO (Nigeria)** [2018] UKSC 53. We note what was said by Upper Tribunal Judge Storey had he not been bound by the Supreme Court's interpretation of s.117B(6). We have however found, based on our own assessment of the evidence from the appellant and the ISW's report, that the content of the relationship between QI and H is not "thin", and that there is strong evidence of the relationship between the appellant and QI.
40. It is a trite proposition of human rights law that this Tribunal must consider the impact on the Article 8 rights of other family members affected by the respondent's decision under appeal (**Beoku-Betts** [2008] UKHL 37). If QI left the UK in order to maintain his relationship with the appellant and AK, this would have a marked impact on his secure parental relationship with H which is likely to result in emotional harm and distress, and which would undermine the "blended family" relationships (as described by the ISW) that now exist. It would also undermine and effectively stultify the judicial finding that requiring QI to leave the UK would constitute a disproportionate interference with Article 8. Further, if the appellant was required to leave the UK, AK's good relationship

with H would be severely undermined as H resides with her mother and could not, on any reasonable view, be expected to leave the UK.

41. If, on the other hand, QI chose to remain in the UK, he would be separated from his partner and their 5-year-old child. This would clearly have a serious negative impact on AK, as well as the appellant. Family relationships between partners and, in particular, between a parent and minor child cannot be effectively conducted across large distances. We note and agree with the observation by the ISW that parenting accessibility is important for the social, emotional and behavioural development and functioning of children, and that contact through remote forms of communication would not compensate for the loss of close physical contact between a parent and minor child.
42. We have taken into account all material considerations, including the identified public interest factors weighing against the appellant and QI. **Zoumbas** [2013] 1 WLR 3690 makes it clear however that a child must not be blamed for matters for which she is not responsible, such as a parent's conduct. Having fully considered the competing factors, we find that either choice by QI would lead to a disproportionate interference with the Article 8 rights of the children. The appellant consequently falls to be allowed.

Notice of Decision

The human rights appeal is allowed

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

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal 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.



17 June 2019

Signed
Upper Tribunal Judge Blum

Date