



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number:  
PA/00917/2019

**THE IMMIGRATION ACTS**

**Heard at North  
Shields  
On 7 June 2019**

**Determination & Reasons  
Promulgated  
On 13 June 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES**

**Between**

**A. B.  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Selway, Brar & Co Solicitors

For the Respondent: Mr Stainthorpe, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant entered the UK lawfully in 2011 with leave to remain until February 2013, however that leave was cancelled in December 2011 so that she became, and has remained, an overstayer. There has been a

protracted series of appeals prompted by the December 2011 decision, but her appeal rights were finally exhausted in March 2016.

2. In August 2018 the Appellant lodged her most recent application for international protection, which was refused on 9 January 2019. Her appeal against that decision was heard and dismissed on all grounds by First Tier Tribunal Judge Cary in a decision promulgated on 13 March 2019.
3. The Appellant was granted permission to appeal that decision on Article 8 grounds only, by decision of 8 April 2019 of First tier Tribunal Judge Scott Baker. It was considered arguable that the Judge's approach had failed to make adequate findings in relation to the best interests of her children, and, had failed to follow the guidance to section 117B(6) set out in KO (Nigeria) [2018] UKSC 53.
4. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence.
5. Thus the matter came before me.

#### The litigation history

6. When the appeal was called on for hearing it was observed by Mr Selway that I had dismissed the Appellant's error of law challenge to a 2014 Tribunal decision, in a decision of 1 March 2016. Upon enquiry neither party made an application for me to recuse myself in the light of that 2016 decision, and both confirmed that they were content that I should hear the current appeal. Having separately reviewed the matter for myself, I was not satisfied that there was any proper basis upon which I should recuse myself of my own motion.

#### The Appellant's position

7. As noted in the grant of permission the Appellant's challenge is restricted to the Judge's dismissal of her Article 8 appeal.
8. The Article 8 appeal that was pursued before Judge Cary was not founded upon any "family life" relationship enjoyed by the Appellant. The Appellant's position remained (as it had been in 2014 and 2016) that she and the children had no contact with the father of her children [39]. She did not claim to have ever entered into a new relationship.
9. Nor did the Appellant identify any aspect of her own "private life" that was said to enjoy any particular

strength, sufficient to engage Article 8. The focus of her Article 8 appeal was upon the “private life” of her eldest child, who had been born in the UK, and who had attained the age of seven by the date of the hearing, and who was thus a “qualifying child”; section 117D(1).

10. The Appellant is not, and has never been, liable to deportation. Since the Appellant’s case was that she was a “sole parent” to her two children, there was no dispute before Judge Cary that she enjoyed a genuine and subsisting parental relationship with them both. Thus her case was, in essence, that the “private life” formed by her children, and their “best interests” outweighed the public interest in the family’s removal to Pakistan. In that sense her case was contingent upon the strength of the claim that it was not reasonable to expect either of her children to leave the UK.

#### The challenge

11. As advanced by Mr Selway, the first limb to the Appellant’s challenge to the decision of Judge Cary appeared to be that since the Respondent had failed to effect the removal from the UK of the Appellant and her children, he was necessarily unable to rely upon the public interest in the maintenance of immigration controls; s117B(1). If that was indeed the nature of the challenge then I am satisfied that there is no merit in it. The significance of the passage of time since 2011 for the Appellant’s Article 8 claim was rehearsed in EB (Kosovo) [2008] UKHL 41. The Appellant has not attempted either before Judge Cary, or now, to establish either that there has been any delay of significance on the part of the Respondent, or, that any such delay was the result of a dysfunctional system yielding unpredictable, inconsistent and unfair outcomes.
12. There was no reliable evidence upon which the Tribunal could have concluded that the Appellant could have genuinely or reasonably concluded that the Respondent had no interest in her removal from the UK. Nor was there any relationship entered into with a sense of impermanence that the parties could have persuaded themselves had acquired a lack of precariousness.
13. Accordingly the significance of the passage of time was, as the Judge recognised, that he had to assess the nature of the Article 8 case as it was at the date the appeal was called on before him. Whilst the Judge had available to him the findings made by the Tribunal in 2013, and again in 2014, upon the Appellant’s Article 8 claim as it was then advanced, he recognised that he had to assess the situation as it was at the date of the

hearing. There is no dispute that he did so, and that he recognised that the Article 8 claims of both parent and children had strengthened with the passage of time.

14. Had the Judge simply been considering the position as it had been in 2016, then he would have had no alternative but to reject the Appellant's Article 8 claim outright, since as he noted, there was no evidence placed before him to suggest that any of the findings of fact made in 2014 or 2016 should be revisited. The Judge also, correctly, identified that the Appellant's position in 2016 (when she was also represented by Mr Selway) was that her removal in the company of her two infant children to Pakistan would not engage the Article 8 rights of any of them [B6 #16]. Her case then was that it engaged their Article 3 rights because they faced a real risk of serious harm in the event of removal to Pakistan – a claim that was rejected as untrue.
15. Mr Selway's challenge therefore appeared to shift before me to a second, narrow, complaint that although the Judge had, correctly, directed himself to the guidance to be found in KO he had necessarily failed to follow it, because otherwise he would have found that the best interests of the children were for the family to remain in the UK, and thus he would have been bound to have allowed the appeal. In my judgement this argument was quite plainly rejected in KO [51], and there is nothing in AB (Jamaica) [2019] EWCA Civ 661 to suggest otherwise.
16. As I understood it, Mr Selway's argument then shifted once more to a third, wider complaint, that although the Judge had purported to consider the circumstances of the children and their mother he had no evidence upon which to support the findings he had made, so that he had fallen into mere conjecture, and had failed to undertake a "real world" analysis of the evidence and the Appellant's position.
17. I reject that argument. In my judgement, when the decision is read as a whole, it is clear that the Judge's starting point was not to rehearse the Appellant's immigration history for the purpose of "visiting the sins of the parent upon the children", but for the purpose of identifying; (a) what weight he could give to the Appellant's evidence, and, (b) the proper context in which he was to assess the question of whether it was reasonable to expect the children to go to Pakistan with their mother.
18. As the Judge clearly identified this was not an appeal in which, sadly, the Appellant's evidence could be taken at face value. I would refer back to my decision of 1 March 2016 [B7-] in which I set out her litigation history, and

analysed the adverse findings that had from time to time been made against her. Repeatedly the Tribunal has been required to make adverse findings upon the Appellant's evidence, as the nature of the different claims to be entitled to remain in the UK that she has made from time to time have evolved. Most recently the claim that was advanced for the first time before me in the Upper Tribunal in 2014 that either she or the children might face a real risk of harm upon removal to Pakistan was rejected as a fiction in the light of the earlier findings of the Tribunal.

19. In order to consider the true circumstances of her children it was not only important for the Judge to consider the weight that could be given to the Appellant's evidence, but it was also necessary for him to consider the unchallenged findings that had previously made against the Appellant, Thus it was relevant that the Tribunal had previously concluded;
  - (i) the Appellant had been well educated in Pakistan at the expense of her family;
  - (ii) she had been employed in Pakistan as a teacher of English and Maths;
  - (iii) she had conceived her eldest child in Pakistan prior to travelling to the UK;
  - (iv) her family had financed her travel to the UK in order that she might live in the UK with the father of her children, and,
  - (v) the Appellant was precisely the sort of qualified and educated woman who would be well able to secure well paid employment in a city in Pakistan and earn sufficient to be able to support herself and her children from her own resources.
20. As the Judge noted the Appellant had adduced no evidence before him to suggest that any of these findings needed to be revisited [39], and his starting point in the assessment of the weight that could be given to her evidence was to note that she was someone who was prepared to seek to mislead the Respondent and the Tribunal in an effort to remain in the UK [40].
21. The Judge noted their mother's unsupported assertion that neither of the children had any fluency in either spoken or written Urdu. I do not accept Mr Selway's claim that he accepted it was true. In my judgement he neither rejected that assertion, nor accepted it, but reasoned that even if it were true, the children would be able to adapt and to acquire the essentials of the culture and language in Pakistan within a reasonable time of arrival. I can see no error in that approach to unreliable

evidence. Nor is there any error in the reasoning offered. International schools teaching in English exist in Pakistan, and there is no proper evidential basis for a suggestion that they would be inaccessible to these children. Moreover the Appellant as their mother is a qualified and experienced teacher of English and Maths in Pakistan, and I can identify no evidential basis upon which it could sensibly be argued that she was unable to teach her own children Urdu, should they in truth lack any spoken or written fluency in it. In the circumstances I am satisfied that the Judge was entirely correct to conclude that both children would be able to access education in Pakistan.

22. The “best interests” of a qualifying child who is not a British citizen, and who is not at an important educational milestone, are not conclusive of the reasonableness of the expectation that they should leave the UK with their parent(s). Were it otherwise, it is clear that the appeal of NS, in KO would have succeeded. Their Lordships noted that it was in the best interests of the children concerned in that appeal for their family to remain in the UK, but concluded that there was no error of law in the assessment of the evidence that had led to the assessment that it was reasonable (in the context of s117B(6)) to expect them to leave the UK with their parents. The conduct of the parent was not irrelevant, since it was the context in which the assessment had to be undertaken, and thus mere reference to that conduct by the Judge could not, of itself, establish a material error of law in his approach.
23. In this case the Appellant’s conduct had led to her being an overstayer in the UK since 2011, and to have pursued a course of conduct towards the Respondent and the Tribunal that was dishonest. Thus the proper context for her appeal was that although she was not liable to deportation, she nonetheless had to leave the UK unless she could bring himself within the provisions of s117B(6).
24. That was the context in which the Judge had to consider whether it was reasonable to expect her eldest child to leave the UK, because as KO states, ordinarily in that context the natural expectation would be that the Appellant’s children would do so. In my judgement that is the context in which the Judge did consider the evidence before him concerning the circumstances of both children. I am satisfied that it was open to him on the evidence to make the findings of primary fact that he made, and they were adequately reasoned. It follows

that it was open to him to reach the conclusions in relation to s117B(6), and upon the proportionality assessment concerning the Appellant's "private life" appeal, that he did. Again I am satisfied they were adequately reasoned; MD (Turkey) [2017] EWCA Civ 1958. Adequacy does not import a counsel of perfection. The Appellant as the losing party, and her advisers, are able to see quite clearly why she lost.

25. The Judge did not have the benefit of the very recent decision in AB (Jamaica) [2019] EWCA Civ 661, because this was only promulgated on 12 April 2019, but nothing turns on that. The Court of Appeal were then concerned with British citizen children, and in each case the child lived with their mother, a British citizen. Neither mother nor child would leave the UK in the event that the father was removed. Thus the Court of Appeal was not concerned with a situation in which the only parent in the children's life had no leave to remain, and thus was required to leave the UK.
26. In the circumstances, and as set out above, I am satisfied that the Judge did not fall into any material error of law when he dismissed the Article 8 appeal, notwithstanding the terms in which permission to appeal was granted. In my judgement the grounds fail to disclose any material error of law in the approach taken by the Judge to the public interest that requires his decision to be set aside and remade.

## DECISION

The Determination of the First Tier Tribunal which was promulgated on 13 March 2019 contained no material error of law in the decision to dismiss the Appellant's human rights appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

### Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her or the children. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

### **Signed**

Deputy Upper Tribunal Judge JM Holmes  
Dated 10 June 2019

