



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/10973/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Decision & Reasons
Tribunal Promulgated
On 17 October 2017 On 19 October 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**ANDRE RODILPHE M'BIKAYI KALONJI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Vokes instructed by TRP Solicitors.

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 6 July 2017, the Upper Tribunal handed down its decision in which it was found the First-tier Tribunal had erred in law in dismissing the appellants protection and human rights claim but only in relation to the assessment of the claim pursuant to article 8 ECHR.
2. The matter comes before the Upper Tribunal today for the purposes of a Resumed hearing to enable that aspect of the appeal to be considered further and for the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.
3. For the purposes of this hearing the appellant has produced further evidence including a report from Diane Harris an Independent Social Worker dated 10 October 2017.
4. At the outset of the hearing Mr Mills addressed the Tribunal in relation to two key questions being (a) whether the child in issue in this case is

a British national and (b) whether the appellant has a genuine parental relationship with the child and that it would not be reasonable to expect the child to leave the United Kingdom. Having considered the material now made available Mr Mills accepted both these questions will be answered in the affirmative.

5. Section 117B (6) of the Nationality, Immigration and Asylum Act 2002 provides that in the case of a person who is not liable to 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.

6. It was conceded that as both these requirements are satisfied the public interest does not require the appellant's removal from the United Kingdom and that the appeal must therefore be allowed.

7. Mr Vokes also referred to the decision of the Court of Appeal in *MA (Pakistan)* which supported the position adopted by Mr Mills.

8. In light of the concession, which is wholly in accordance with the law and represents the only outcome the Upper Tribunal could realistically achieve in relation to this matter, the appeal is allowed on human rights grounds.

Decision

9. **The original First-tier Tribunal Judge has been found to have materially erred in law and that decision set aside. I remake the decision as follows. This appeal is allowed.**

Anonymity

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

Signed.....
Judge of the Upper Tribunal Hanson

Dated the 1⁷ October 2017