



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/01346/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 6th June 2017

Promulgated

On 20th June 2017

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS M B

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr S Pinder of Counsel, Active Immigration LTD

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Secretary of State in relation to a judgment of First-tier Tribunal Judge Buckwell promulgated on 11th April 2017 following a hearing at Taylor House.
2. The Appellant before the First-tier Tribunal, Ms M B, was born in November 1983 and is a citizen of Mongolia. She originally entered the UK as a Tier 1 dependant in October 2011 and she had leave thereafter until it finally expired on 10th October 2016. She was at all times lawfully in the UK and she made an application to remain. This is a very unusual case in that the

Appellant and her husband are a couple with significant means. He had a well paid position with a bank in London and they acquired a valuable home in London. However, their marriage proved to be short-lived and notwithstanding Wardship proceedings in the UK and supposedly the surrender of the husband's passport, he nevertheless abducted their, at the time 20 month old son, and took him to his home country, Singapore. Since that time there have been extensive proceedings both in Singapore and in the UK and there have been two judgments from the High Court in the UK. It is pertinent to mention at this stage that in the Wardship proceedings the child's interests were separately represented by a Guardian ad Litem.

3. There have been two lengthy judgments, one in March 2014 and one in November 2016. Those judgments come down firmly in mother's favour, ordering the return of the child to the UK and indeed concurrent proceedings in Singapore have made similar orders. All those orders have been frustrated by the refusal of the husband to comply and the most recent order of the High Court in this country was of Mrs Justice Roberts on 16th November 2016.
4. In, what is a lengthy judgment running to some 109 paragraphs Mrs Justice Roberts made a final order in relation to the child and his best interests and she says at paragraph 108 of that judgment:

“In the final analysis, the Guardian did not find this to be a finely balanced case and neither do I. I am wholly persuaded that it is overwhelmingly in M's best interests to be returned to the full-time care of his mother in this jurisdiction at the earliest opportunity.”

She goes on at paragraph 109 to say:

“There will be orders (i) prohibiting the father or anyone else from removing M from her care (that's the mother); and (ii) prohibiting the mother from removing M from this jurisdiction.”

It can be seen from that that the High Court in this country, after very careful consideration, has determined the child should be in the UK, cannot be removed from the UK and should be in the care of his mother.

5. In allowing the appeal on Article 8 grounds Judge Buckwell clearly had all of that in mind. It was an unusual case because it did not fit into the Immigration Rules and indeed the child, having been abducted, is currently not in the UK. However, dismissing this lady's appeal would prevent her from carrying out what the High Court had ordered, namely bringing the child back to the UK. I have no intention of taking any action which would frustrate the very clear order and wishes of the High Court and for that reason find that Judge Buckwell did not make a material error of law in his determination of this appeal and therefore the appeal to the Upper Tribunal by the Secretary of State is dismissed.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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.

Signed

Date 19th June 2017

Upper Tribunal Judge Martin