



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/23185/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Determination

On 20 July 2017

Promulgated

On 21 July 2017

Before

Deputy Upper Tribunal Judge MANUELL

Between

**KANWALJIT [K]
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss U Dirie, Counsel

(Instructed by Bhogal Partners Solicitors)

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

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Designated First-tier Tribunal Judge McCarthy on 8 June 2017 against the determination of First-tier Tribunal Judge Chana who had dismissed the appeal of the Appellant seeking settlement outside the Immigration Rules on Article 8 ECHR grounds. The decision and reasons was promulgated on 4 May 2017.
2. The Appellant is a national of India. The Appellant had entered the United Kingdom lawfully as a Tier 4 (General) Student Migrant on 29 July 2009. Subsequently the Appellant was granted leave to remain in Tier 1, valid to 5 May 2012. The Appellant said she used an agent to make the visa application. She returned to India in 2011 where she said she married. She came back to the United Kingdom on her own. The Appellant said that she used the same agent to obtain a spouse visa for her husband, but the agent was arrested for fraud and her passport was retained by the Home Office. She was unable to sit her IELTS tests in consequence. The Appellant claimed that her marriage broke down. She subsequently met an Indian man in the United Kingdom and became pregnant by him. The child was born in November 2016. She feared returning to India with her child because the child would be regarded as illegitimate. She relied on Article 8 ECHR.
3. The judge found that the Appellant was not a witness of truth. Her private life Article 8 ECHR claim was modest and insufficient to tip the proportionality balance on her favour. The Appellant had failed to prove that she had a relationship with the father of her child or that he had contact with the child. There were divorce proceedings in progress in India, which the Appellant had not described truthfully. The Appellant could return to India with her child and would not be ostracised there. Her family would support her as they had done in the past when financing her studies. There were no exceptional circumstances and the Appellant and her child's return were proportionate to immigration control in the public interest. The judge dismissed the appeal on that basis.

4. Permission to appeal was granted on the sole ground that it was arguable that the judge had failed to consider the well being of the Appellant's child when assessing proportionality for Article 8 ECHR purposes. That may have been caused by the failure of the Appellant to produce any evidence on the subject.
5. Standard directions were made by the tribunal. No rule 24 notice opposing the appeal was filed by the Respondent, however Mr Clarke confirmed at the hearing that the appeal was indeed opposed.

Submissions

6. Miss Dirie for the Appellant relied on the grounds of onwads appeal and grant. In summary, counsel submitted that the judge had engaged in speculation. There were no proper foundations for the judge's findings. The fact that the Appellant's parents had been willing to educate her was not a sound basis for a finding that her parents would accept her illegitimate child. The judge had failed to consider the best interests of the child and there had been no reference to section 117B(6) NIA 2002 and the reasonableness of the child's going to India, where discrimination would be faced. The determination should be set aside and remade.
7. Mr Clarke for the Respondent submitted that there was plainly no material error of law. The onwads appeal should be dismissed.

No material error of law finding

8. In the tribunal's view the grant of permission to appeal was generous, and had not taken account of the Appellant's original grounds of appeal and the complete absence of any argument raised or evidence produced (beyond that addressed by the judge as to consequences of illegitimacy in India) as to the best interests of the very young child. The Appellant's grounds of appeal were silent on the point, merely at [9] stating that "The Appellant gave birth to a healthy child in November 2016." It is axiomatic that a baby's best interests must be to remain with its mother, absent any issues as to parental competence, or need for

specialist medical attention. There was none in the present appeal; indeed, the Appellant is qualified as nurse and may be thought to have qualifications of additional benefit to the child. That is an obvious and permissible inference. As the judge noted, there was no reliable evidence as to the involvement of the child's father, indeed nothing from him at all. It was a permissible if not inescapable inference that he had no lawful status in the United Kingdom and therefore could return to India if he wished to have contact with the child and/or the Appellant.

9. There was no suggestion that the very experienced judge had misunderstood any of the evidence. She had examined the family situation with care despite the unreliable and generally thin evidence and was entitled to find that the family life could be continued in India without insurmountable obstacles because the Appellant would be able to find work there and provide for her child. It was a reasonable inference for the judge to draw that the Appellant's family would support her as they had done in the past, by financing her education in a foreign country. That plainly indicates a modern outlook. Indeed, the tribunal adds that the Appellant's name indicates that she and her family (and indeed both of her male partners) are Sikh, a religion whose key tenets include equality between genders. The Appellant had not advanced a protection claim as to her marital status and the judge was entitled to find that neither the Appellant nor her child were at risk of harm on return to India.
10. It is not easy to see what more the judge could have done, given the evidence before her. Section 117B(6), part of the statutory public interest consideration applicable to the tribunal's consideration of Article 8 ECHR, is in the following terms:

"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 relationship with a qualifying child (defined in section 117D as a person under the age of 18 and who is (a) a British Citizen or (b) has lived in the United Kingdom for a continuous period of seven years or more), and

(b) it would not be reasonable to expect the child to leave the United Kingdom.”

11. As the judge found as a fact by necessary implication that it was reasonable for the child to leave the United Kingdom to live in India with her mother, the reasonableness issue had already been decided against the Appellant and her child and so did not require to be examined a second time. As noted above, the Appellant had accepted before the judge that she would be able to find work in India and thus provide for herself and her child: see [32] of the decision and reasons. There was no need for a separate discussion of section 117B(6).
12. Miss Dirie did not seek to argue that there were any exceptional circumstances applicable to the appeal which had been overlooked by the judge.
13. The tribunal finds that the onwards appeal has no substance or merit and that there was no material error of law in the decision challenged.

DECISION

The appeal is dismissed

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed

Dated 20 July 2017

Deputy Upper Tribunal Judge Manuell