



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/30030/2015

THE IMMIGRATION ACTS

Heard at Field House

On 6 July 2017

**Decision & Reasons
Promulgated
On 12 July 2017**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR YASIR ALI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Whitwell, Home Office Presenting Officer

For the Respondent: Mr J Gajjar, Counsel, instructed by M-R Solicitors (Larkshall Rd)

DECISION AND REASONS

1. The Secretary of State appeals with permission against a decision of Judge of the First-tier Tribunal Rayner, who in a determination promulgated on 24 October 2016 allowed the appeal of Mr Yasir Ali against a decision of the Secretary of State to refuse him leave to remain on human rights grounds. I will for ease of reference refer to the Secretary of State as the

respondent as she was the respondent in the First-tier and similarly I will refer to Mr Yasir Ali as the appellant as he was the appellant before the First-tier Tribunal Judge.

2. The appellant is a citizen of Pakistan born on 4 October 1989. He entered Britain as a student in February 2011 and had leave to remain in that capacity until March 2012. Further applications for leave to remain as a student were unsuccessful. He then made an application on 2 December 2014 for leave to remain on private and family life grounds. That application was based on the fact that he had a partner, [KS], who later changed her name by deed poll to [AA], and that he was the father of [MA], born on [] 2014, and the stepfather of [AS], who was his partner's son by a previous relationship. [AS] had been born on [] 2008. Since the decision was made to refuse the application the appellant and [KS] have a second child, [HA], born on [] 2016. The appellant's partner and all three children are British citizens.
3. The application was refused on the basis that the appellant could not fall within the requirements of Section EX.1 and furthermore that he had failed or had fraudulently claimed to have passed an English language test in March 2012 in connection with his application for leave to remain as a student.
4. The judge considered evidence regarding the English language test and came to the conclusion that the appellant had put forward evidence that was fraudulent with regard to his English language test. He then considered the application outside the Rules. He set out the usual **Razgar** formula in paragraph 30 of the determination and considered the application under paragraph 276ADE(1)(vi). He concluded that it would be disproportionate for the applicant to be expected to leave. He took that position having taken into account relevant Supreme Court decisions, that is, **ZH (Tanzania)** and **Zoumbas**. He also considered the decision in **EV (Philippines)**. He referred to the best interests of the children and on that basis allowed the appeal on human rights grounds.
5. The focus of an appeal of this sort is now that of the application of Section 117B(6) of the Rules. The terms of that Section make it clear that in the case of a person who is not liable to deportation the public interest does not require the person's removal where it would not be reasonable to expect a child to leave the United Kingdom. Under the terms of the interpretation of that Section (at section 117 (D)) it is stated that it is not reasonable to expect a British child to leave the United Kingdom.
6. That Section has been considered by the Secretary of State in Immigration Directorate Instructions, the IDI being "Family Migration Appendix FM Section 1.0b Family Life (as a Partner or Parent) and Private Life: 10-Year Routes". The guidance at paragraph 11.2.3 deals with the issue of whether or not it would be unreasonable to expect a British Citizen child to

leave the UK, and the conclusion of the IDI is that it would be unreasonable.

7. This was an issue which was considered by the Upper Tribunal in the case of **SF and others (Guidance, post-2014 Act) Albania [2017] UKUT 120 (IAC)**. The Tribunal, who had quite properly been informed of the terms of the IDI by the Presenting Officer in that case, reached the conclusion that in cases of this sort it would be unreasonable to expect a British child to leave. That being the case the judge was correct to allow the appeal.
8. I therefore consider that there is no material error of law in the determination of the First-tier Judge and the appeal of the Secretary of State is dismissed and the appeal remains allowed on human rights grounds.

Notice of Decision

The appeal of the Secretary of State is dismissed. The decision of the judge in the First-tier to allow the appeal shall stand.

No anonymity direction is made.

Signed



Date 11 July 2017

Upper Tribunal Judge McGeachy