



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

Appeal Number: IA/30165/2015

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment Centre  
On 4 May 2017**

**Decision & Reasons  
Promulgated  
On 23 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR AMARPAL SINGH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Muquit (Counsel)  
For the Respondent: Mrs H Aboni (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Butler, promulgated on 10<sup>th</sup> August 2016, following a hearing at Sheldon Court on 14<sup>th</sup> July 2016. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State subsequently

applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a male, a citizen of India, who was born on 20<sup>th</sup> April 1978. He appealed against the decision of the Respondent dated 13<sup>th</sup> August 2015, refusing his application for leave to remain in the UK on the basis of his family and private life.

### **The Appellant's Claim**

3. The Appellant's claim is that he is in a genuine and subsisting relationship with his British partner. At the time of his application, his partner was pregnant expecting his child, but the child had not yet been born, although there was a child of that relationship now.

### **The Judge's Findings**

4. The judge heard evidence from the Appellant, based upon his witness statement of 5<sup>th</sup> March 2016, that he now had a child who could not go to India where the climate was too hot and he was in any event, a British citizen. His British citizen partner could not leave the UK, because she had a full-time job, and she would return to work on 1<sup>st</sup> August 2016 after maternity leave. The son suffered from meconium ingestion at birth, which led him to be kept in the hospital longer than usual. The Appellant's Counsel, Mr Muquit made submissions that, he would have to accept that the Appellant had overstayed when his working holidaymaker visa expired in 2008, but he had kept in touch with the Home Office, through his various applications to remain here, and he now had a British citizen child, and his wife owned her own home, which was subject to a mortgage, with the wife being the main breadwinner, such that the Appellant could not return to India with her. Their future plans were that the Appellant would look after their newly born child when the partner returns back to work. If he had to return to India himself his partner would have to give up her job to stay at home.

### **The Judge's Findings**

5. The judge set out the proper standard of proof, that the fact that the child was a British citizen child, and that the decision reached had to comply with Section 117B of the 2002 Act, where public interest considerations had to be taken into account. The judge then decided that the appeal would be allowed on human rights grounds.

### **Grounds of Application**

6. The grounds of application state that the judge failed to properly heed the decision in **MA (Pakistan) EWCA Civ 705**. The ratio of that case appears at paragraph 45, and what it states is that the wider public interest should

be taken into account, particularly the immigration history of the Appellant, as that will go to the balance of considerations.

7. On 21<sup>st</sup> November 2016, permission to appeal was granted.

### **Submissions**

8. At the hearing before me on 4<sup>th</sup> May 2017, Mrs Aboni, appearing on behalf of the Respondent Secretary of State, relied upon the Grounds of Appeal. She made the following submissions. First, the judge failed to give adequate reasons for finding that it would be unreasonable for the Appellant to return for a short period to India in order to make an application for a spouse's visa to enter in a lawful manner. Second, Section 117B was not correctly applied. Third, the case of **MA (Pakistan) EWCA Civ 705** was misconstrued. This is because the judge simply jumped to the "best interests" consideration in relation to the child, without properly weighing in the balance the Appellant's appalling immigration history. This was plain from paragraph 19 of the determination where the judge simply concludes that it would be unreasonable for the Appellant to return to India to make a proper application in a lawful manner.
9. For his part, Mr Muquit made the following submissions. First, the judge was clear that none of the Appellant's submissions had been challenged by the Respondent. Second, that Mr Muquit himself had represented in that case and he had placed his skeleton argument before the judge, leading him to in terms say that he had considered "all the circumstances" of the case. Third, the judge did not overlook the Appellant's immigration history, because Mr Muquit had "confirmed that the Appellant overstayed when his visa expired in 2008 ..." (paragraph 9). Fifth, the Secretary of State had not taken into account the birth of the child, because at that time of the decision the child had not been born, but the judge had before him now evidence of the child having been born, and was naturally going to take this into account. Finally, the Respondent Secretary of State could have faulted the Appellant at the "suitability" stage by concluding that the Appellant had overstayed by over 28 days, and that would have prevented the Appellant's consideration under the paragraph 276ADE provisions. However, the Respondent Secretary of State did not take this view. The Appellant was deemed to have got through the "suitability" provisions. Given that this narrative was fixed before the judge below, this Upper Tribunal could only offset that decision if it can be reasonably concluded that the judge failed to take into account the Appellant's immigration history in deciding where the balance of considerations lay in relation to the wider public interest.

### **No Error of Law**

10. I am satisfied that the making of the decision by the judge did

11. First, the judge directed himself appropriately. This is clear from paragraph 14, where the judge recognises that the “public interest considerations in Section 117B” is taken into account. He further directed himself, not only in relation to the Appellant having a genuine and subsisting parental relationship with a qualifying child, but also that “it would not be reasonable to expect the child to leave the United Kingdom” (paragraph 14).
12. Second, the judge then had regard to the case of **MA (Pakistan) [2016] EWCA Civ 705**, observing that this was a stand alone subSection. It was subject to the caveat that it would not be reasonable to expect the child to leave the United Kingdom (see paragraph 15).
13. Third, the judge noted that the Appellant’s child being a British citizen was “not a trump card” (paragraph 16). The child’s particular position was then considered on the basis that the child was entitled to be brought up by both parents.
14. Finally, it was in the concluding paragraph that the judge then explained why the Appellant’s situation fell in favour of the Appellant. Here the judge notes that “none of the submissions made on behalf of the Appellant have been challenged in this appeal. Having considered all the circumstances in the round, I find that it would be unreasonable to require this British child to be brought up in India” (paragraph 19).
15. As to why the judge would have concluded in this manner, the facts relating to this conclusion are set out at paragraph 9, where the judge observes that the Appellant’s wife is the main breadwinner, and that she has a home of her own on a mortgage, which she would have to give up if she were to go to India with the Appellant. If the Appellant himself were to return to India, then she would have to remain at home to look after the child. These facts, as the judge found, had not been challenged in the appeal.
16. On the evidence before the judge, this was a conclusion that he was perfectly entitled to come to. The decision cannot be said to be perverse in any way.

### **Notice of Decision**

There is no material error of law in the original judge’s decision. The determination shall stand.

No anonymity direction is made.

Signed

Date

Appeal Number: IA301652015

Deputy Upper Tribunal Judge Juss

22<sup>nd</sup> May 2017