



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/34526/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 13 June 2017

**Decision &
Promulgated**

On 16 June 2017

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**MR MUHAMMAD USMAN AHSAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Claimant

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer

For the Respondent: Mr M Harris, Counsel, instructed by Farani Javid Taylor
Solicitors

DECISION AND REASONS

1. This is an error of law hearing. The appellant in this matter is the Secretary of State and Mr Ahsan is the Claimant. The Secretary of State has appealed the decision made by the First-tier Tribunal, Judge Suffield-Thompson ("FTT") promulgated on 30 November 2016 in which she allowed the appeal outside of the Rules under Article 8 and with reference to Section 117B(6).
2. The Claimant is a citizen of Pakistan and he is married to a British citizen and has a British citizen child. At the time of the FTT hearing his wife was

expecting another baby. That child has now been born. The Appellant refused the application on the grounds that the Claimant did not meet the Rules for Suitability (S LTR 1.6) as he had used deception in a previous application by using a proxy taker in his English language test on 18.9.2013 and that the relationship developed in precarious circumstances. The Claimant had leave as a student when he married the sponsor. The FTT dismissed the appeal under the Rules on the same grounds but found exceptional circumstances under Article 8 outwith the Rules.

3. In the grounds of appeal the Secretary of State argued that the FTT erred by treating the fact that the Claimant was married to a British citizen and the child was a British citizen were exceptional circumstances justifying consideration outside of the Rules under Article 8. Secondly, it was argued that the FTT erred in law by failing to follow **MA (Pakistan) [2016] EWCA Civ 705** in which it was confirmed that the assessment of reasonableness allowed for consideration of the wider public interests. Permission to appeal was granted on all grounds.
4. The matter comes before me today and I have heard submissions from Mr Harris and from Mr Nath. I am satisfied having considered all of the evidence before me that there was a material error of law by the First-tier Tribunal Judge and that both grounds argued by the Appellant are made out.

Discussion and decision re error of law

5. The FTT made clear findings when considering the appeal under the Rules as to the use of dishonesty by the Claimant [34 & 36] and the fact that the relationship and marriage arose in precarious circumstances. The FTT found that the Claimant's presence was undesirable and that it was a very serious act to try to manipulate the immigration rules by cheating in the English Language test. However, when looking at Article 8 the FTT failed to properly consider the public interest factors and the focus of her assessment was on the fact that the wife and child were British citizens [45]. The FTT found that these factors were sufficient to justify consideration outside the Rules [38].
6. In its proportionality assessment under Article 8 the FTT placed weight on the primary consideration of where the best interests of the British citizen child lay [51] having found that the child's interest were to remain in the UK with both parents. Yet in my view made no real assessment of the evidence in that regard. The child was 1 year old and at that age it is generally the case that the interests of the child lie simply by remaining with both parents. The FTT made no assessment of the child's circumstances in the event of the family moving to Pakistan. The FTT concluded that the child "would lose out on many things as identified by Lady Hale" in **ZH (Tanzania) v SSHD [2011] UKSC 4**. The FTT decision in short failed to adequately explain how the best interests of the child, which are a primary consideration, were capable of outweighing the

public interest factors identified under S LTR 1.6 (dishonesty) and which were matters to be considered in terms of reasonableness under Section 117B(6) when dealing with a qualifying child.

7. Accordingly there is an error in law and I set aside the decision of the FTT.

Re making the decision

8. I proceeded to hear submissions from Mr Harris and Mr Nath and reserved my decision which I now give with my reasons. I rejected Mr Harris' application for the matter to be remitted to the First-tier Tribunal for rehearing as there was no basis to support that argument given that findings of fact remained. I rejected his further application for an adjournment to obtain medical evidence to support the claim that the sponsor had been diagnosed with diabetes. I had in mind the standard practice direction that the parties must be ready to deal with the substantive matter following any error of law decision. I allowed the Claimant to adduce evidence of a test result of his wife's diagnosis of diabetes. I was also aware that the second child had been born.
9. I consider the evidence that was before the FTT and the findings made in particular that the Claimant used deception in obtaining an ELTS certificate although I accept that he did not in fact use the certificate. The parties met and developed their family life in the knowledge that the Claimant's circumstances as a student in the UK, were precarious. The FTT dismissed the appeal under the Immigration Rules relying on the failure to meet the suitability and eligibility requirements and that he was a person whose presence was not conducive to the public good. That decision stands and no grounds have been argued that the FTT erred in this regard.
10. As to whether or not Article 8 outside of the Rules is engaged I take the view that there was no evidence of any compelling or exceptional circumstances that were not covered by the Rules and the fact that the Claimant's wife and child were British citizens were not exceptional and could not justify consideration outwith the Rules. The FTT should not have proceeded to consider Article 8 at all and I dismiss the appeal.
11. Alternatively, if Article 8 was found to be engaged the assessment would focus on proportionality and in reaching a decision the public interest factors under section 117B apply. This includes the application of section 117B(6) where there is a British Citizen child. At the FTT hearing there was one child qualifying as a British citizen who was one year old and apart from the fact that he was a British Citizen there was no other evidence or findings made to show why his best interests lay in remaining with his parents in the UK. The FTT failed to follow **MA(Pakistan)** in that it did not look at the wider public interests in assessing reasonableness of the child living in Pakistan or in assessing the proportionality of the interference in the removal of the Claimant. There was no evidence that was capable of tipping the balance in favour of the child or outweighing

the public interest, given his age and the findings that there were no insurmountable obstacles to the couple living in Pakistan given that the sponsor spoke English, Urdu and Punjabi. Even accepting that the sponsor was suffering from diabetes, I find no evidence that she would not be able to obtain treatment in Pakistan for a common illness. There were family members in Pakistan who could support the appellant, his wife and his children. Article 8 is not engaged nor breached as the family can relocate to Pakistan and it would be reasonable for the children to do so with their parents. The wider public interests in maintaining a fair and consistent immigration control which does not allow undesirable persons to remain in the UK outweighs the private interest of the child as a British citizen in this case.

Notice of Decision

The appeal is dismissed.

Signed

Date 15.6.2017

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 15.6.2017

Deputy Upper Tribunal Judge G A Black