



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/01885/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 11 December 2018**

**Decision & Reasons Promulgated
On 20 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MR SAMEERALI MANGALASSERI
(NO ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Singer of Counsel instructed by Chhokar & Co Solicitors
For the Respondent: Mr D Clark Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Peter-John S White promulgated on the 11th October 2018 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on Article 8 of the ECHR.
2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to do so.
3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Boyes on 5th November 2018. Thus the case appeared before me to determine whether or not there was a material error of law in the decision. Leave was granted on all grounds. Ground 6 sets out :-

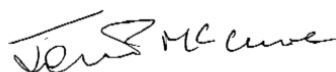
The FTJ failed to have regard to relevant matters in his assessment of 'reasonableness' under section 117B (6) of the Nationality, Immigration and Asylum Act 2002

4. At the hearing before me taking account of the provisions of section 117 B (6) of the 2002 Act; taking account of the fact that there was a British citizen child; and taking account of the case of KO 2018 UKSC, it was accepted by the representative for the respondent that there was a material error of law in the decision.
5. It was accepted on the part of the Secretary of State that where there was a British citizen child it was not reasonable to expect the British citizen child to leave the United Kingdom. It was accepted that the appellant had a genuine parental relationship with the British citizen child and therefore the provisions of 117B (6) applying the decision under appeal was not proportionately justified.
6. On behalf of the appellant Mr Singer wished to argue the remaining grounds, grounds 1 to 5. The grounds were not conceded by the respondent. However equally as I was setting aside the decision of Judge Jones, the findings, in respect of which challenges were made, would not stand. Clearly in any future proceedings, if it was considered appropriate and if reliance was to be placed upon allegations that the appellant had acted fraudulently or dishonestly in obtaining TOEIC certificate, that would be a matter for evidence to prove the same and the decision by any future judge in any such future proceedings.
7. As the decision of Judge Jones is set aside, none of the findings of fact are preserved.
8. In the circumstances it is found that there is a British citizen child and the respondent accepts that it would not be reasonable to expect that British citizen child to leave the United Kingdom. It is further found that the appellant is in a genuine parental relationship with that British citizen child. Therefore by reason of Section 117 B (6) and taking account of the case of KO it is accepted that the appeal of the appellant is to be allowed under Article 8. For the avoidance of doubt by reason of the matters set out the decision to refuse the appellant further leave to remain in the United Kingdom and thereupon to remove him is not in all the circumstances proportionately justified and is therefore in breach of his and the British citizen child's article 8 rights.

Notice of Decision

9. I allow the appeal on article 8 grounds.

Signed



Deputy Upper Tribunal Judge McClure
2018

Date 11th December