



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/01970/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 25 October 2017**

**Promulgated**

**On 5 March 2018**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**M A B**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: The appellant appeared in person

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan. He appeals with the permission of First-tier Tribunal Judge Nightingale a decision of the First-tier Tribunal to dismiss his appeal against the decision of the Secretary of State on 18 January 2017 refusing him leave to remain on human rights grounds.
2. The appellant entered the United Kingdom in October 2009 as a student. His leave was extended until August 2014 but curtailed until 20 July 2014. He applied for further leave to remain as an unmarried partner. That was refused in September 2014 and on 24 December 2015 he applied for leave to remain on the basis of his relationship with his two children. The application was

refused and it was that refusal that led to the appeal before the First-tier Tribunal which was unsuccessful.

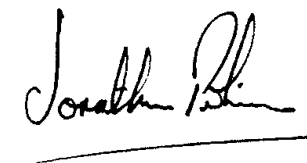
3. Genies are not easily rebottled but before I can interfere with the decision of the First-tier Tribunal I must be satisfied that it erred in law on the material that was before it. I have tried to put out of my mind the fact that I know more than was known to the First-tier Tribunal because there was additional material before me, which I found to be credible and persuasive and pertinent.
4. When the case came before the First-tier Tribunal there was evidence that the appellant and his wife were estranged. There was evidence that there had been court proceedings. There was no supporting evidence from the appellant's wife or other family members.
5. The judge, correctly, had his mind firmly fixed on the provisions of paragraph 117B(6) which provides that in the case of a person who is not liable to deportation (this is not a deportation appeal) the public interest does not require removal where the person has a genuine and subsisting parental relationship with a qualifying child and it would not be reasonable to expect the child to leave the United Kingdom.
6. The case was built on the appellant's relationship with his twin daughters. They were born in April 2015. Sadly one of his daughters suffers from a very serious condition which is analogous to a brain tumour.
7. The First-tier Tribunal, unremarkably, was satisfied that it would not be reasonable to expect the child to leave the United Kingdom but was not satisfied that there was a genuine and subsisting parental relationship. The judge accepted there was a genuine parental relationship but not that it was subsisting.
8. He based that conclusion on the absence of supporting evidence from family members and the fact that there had been family court proceedings in relation to the children that "were withdrawn".
9. I have seen the court order dated 12 May 2017. The proceedings were indeed withdrawn as the First-tier Tribunal Judge found but the Judge did not acknowledge that amongst the reasons given for permitting the proceedings to be withdrawn were that both parents had been working together to meet the needs of the children and, most importantly, that the appellant "provides ongoing day to day assistance in the care of the children". When the Court made its order, before giving permission to withdraw the proceedings, it was satisfied that there had been progress regarding the parents' attitudes towards domestic conflict, and recognition that the appellant would continue to work on his attitude to it, and upon the CAFCASS confirming that both parents were effectively working together to meet the children's needs.
10. The order is not a highly illuminating document. It is not written to assist an Immigration Judge but it is far more consistent with the appellant's case, namely that he was closely involved in the lives of the children and reconciled to his wife, than it is with the judge's finding that the parental relationship was not subsisting.
11. I find the judge's finding on that point was wrong. It did not show a proper appraisal of the evidence. In particular it did not show acknowledgment of the contents of the Family Court Order and, less importantly, did not show

consideration of photographic evidence of the family members functioning together. That evidence is of less importance because a photograph is no more than an image of a moment in time but it is relevant because the photograph showing the appellant with his wife and children was a photograph of a woman who before me identified herself as the appellant's wife. It follows that I am entirely satisfied that the judge in fact erred in law by not considering the evidence properly.

12. I also record that Mrs NA addressed me. She was not giving evidence. She was speaking to support her husband and acting as his representative. She drew to my attention documentation proving that there was a civil marriage ceremony on 19 July 2017 slightly less than a month after the First-tier Tribunal's hearing when she married the appellant.
13. I found her to be articulate, moving and honest. Understandably and without losing her dignity she became a little emotional when she talked about the needs of the children and her husband's role in supporting her and their daughters. She said that they had been through a difficult time but had addressed problems in their marriage and she recognised that the children needed the warmth of their father. She explained that both children were suffering. Of course there was particular concern about the little girl who was very ill but the twin was finding it hard to understand and asking questions that were difficult to answer and both children needed their daddy.
14. She explained why she had not attended the hearing of the First-tier Tribunal. She said that she had not appreciated how important her presence might be. She was working and although her employers were being supportive she had had a lot of time off to take care of the children and particularly to make hospital and similar visits. She did not feel it justified in taking further time off. This is not what a lawyer would have advised her but from her point of view I can understand that and regard it as an entirely reasonable if ill-advised decision.
15. Mr Melvin contended that the judge had made a proper decision on the evidence before him. For the reasons I have given above I do not agree with that submission.
16. Clearly the First-tier Tribunal erred in law.
17. I now have to decide how to address the remedy. As I have explained Mrs NA's address was not given as a witness. It follows that she was not cross-examined.
18. Mr Melvin said that he wanted documentary evidence to support the case and wanted to know more about the financial aspects.
19. Mr Melvin did not indicate that he wanted to ask any questions that would go to the genuineness of the claim that they had reconciled. That is not something about which documentary evidence can be expected although there is the finding in the Court Order and there is now a marriage certificate which shows the appellant and his wife residing at the same address. Those things have already been produced.
20. I decided on that evidence that the appellant is in a subsisting relationship with his children as well as the genuine and loving relationship which the First-tier Tribunal identified. I note the clear finding at paragraph 11 of the First-tier Tribunal's decision that it would not be reasonable to expect the child to leave

the United Kingdom and O expressed myself satisfied that the appellant has a genuine and subsisting parental relationship with a qualifying child and that following the terms of Section 117B(6) the public interest does not require removal and I am going to allow the appeal.

21. If Mr Melvin takes the view that he has been materially disadvantaged by a procedure that I recognise was procedurally irregular then he must look for remedies elsewhere.
22. For the reasons given I find the First-tier Tribunal erred in law. I set aside its decision and I allow the appellant's appeal against the Secretary of State's decision.

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Signed

Jonathan Perkins, Upper Tribunal Judge

Dated: 1 March 2018