



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05113/2016

THE IMMIGRATION ACTS

Heard at: UT(IAC) Birmingham
On: 03 September 2018

Decision & Reasons Promulgated
On: 10 September 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MUHAMMAD JUNAID DAR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe, instructed by Cartwright King Solicitors

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal comes before me following the grant of permission to appeal on 8 January 2018.
2. The appellant is a national of Pakistan, born on 3 June 1992. He entered the UK on 1 April 2011 with leave to enter a Tier 4 student valid until 27 June 2012. He was refused further leave and was served with a removal decision on 13 February 2014. He did not leave the UK but made further applications following his Islamic marriage on 13 April 2014 to a Bosnian national who had been granted indefinite leave to remain in the UK. His human rights application was refused on 3 October 2014 and an appeal against that decision was dismissed

in the First-tier Tribunal on 26 January 2015. Subsequent to the birth of his son the appellant made further submissions on 19 August 2015 which were considered as a fresh human rights claim.

3. The appellant's claim was refused on 11 January 2016. He appealed against that decision and his appeal was heard by First-tier Tribunal Judge Burns on 6 July 2017. By that time the appellant's partner was pregnant with their second child. Judge Burns found that it would not be unreasonable to expect the appellant's son to return to Pakistan with his parents. She dismissed the appeal.

4. The appellant sought permission to appeal against the decision. Permission was granted by First-tier Tribunal Judge Robertson on the grounds that there was nothing to suggest that the respondent had applied her policy with regard to the grant of leave to a parent of a British national child, as provided in SF and others (Guidance, post-2014 Act) Albania [2017] UKUT 120.

5. At the hearing before me Mr Pipe submitted that the appellant now had two British sons. He submitted that had the judge been referred to, and considered, the previous Home Office "Immigration Directorate Instruction - Family Migration - Appendix FM, Section 1.0(B) Family Life as a Partner or Parent and Private Life, 10 year Routes" of August 2015 and the case of SF, she would have had to allow the appeal on the basis that it was not reasonable to expect the appellant's children, British citizens, to leave the UK and that the appellant therefore met the requirements in section 117B(6) of the Nationality, Immigration and Asylum Act 2002. He submitted that the judge had provided no reasoning for her finding that it would be reasonable to expect the children to leave the UK.

6. Mrs Aboni agreed that the judge had erred in law and that her findings on reasonableness were contrary to the Home Office policy.

7. I asked the parties if that error was material, given the terms of the revised policy, "Appendix FM 1.0b: family life (as a partner or parent) and private life: 10 year routes" dated 22 February 2018.

8. Mr Pipe submitted that the additional element in the updated guidance was contrary to the statute and the Secretary of State still conceded in her policy that expecting a British child to leave the UK was unreasonable. Mrs Aboni agreed with Mr Pipe and accepted that I should find a material error of law in the judge's decision and re-make the decision by allowing the appeal.

9. In the circumstances, given the concessions made by Mrs Aboni, I find that the judge materially erred in law and I set aside her decision. In line with the submissions made not only by Mr Pipe but also as conceded by Mrs Aboni on behalf of the Secretary of State, I re-make the decision by finding as follows: that in accordance with the Home Office guidance it would be unreasonable to expect the appellant's British children to leave the UK, that the appellant accordingly benefitted from the statutory provision in section 117B(6) of the Nationality, Immigration and Asylum Act 2002 and that the public interest did not require

his removal from the UK, and that his removal would accordingly be disproportionate and in breach of his Article 8 human rights.

DECISION

10. The making of the decision by the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision and re-make it by allowing the appellant's appeal on Article 8 human rights grounds.

Signed: 

Upper Tribunal Judge Kebede

Dated: 3 September 2018