



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/11444/2016

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 20<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 06<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GINA [P]  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mrs R Pettersen, HOPO  
For the Respondent: Barras White Legal Solicitors

**DECISION AND REASONS**

1. This is the Secretary of State's appeal against the decision of Judge Bradshaw made following a hearing at Bradford on 20<sup>th</sup> June 2017.

**Background**

2. The claimant is a citizen of the USA born on 23<sup>rd</sup> September 1981.
3. She entered the UK on 31<sup>st</sup> July 2015 from Australia with her child, born on 7<sup>th</sup> March 2012, with entry clearance as a visitor valid to 31<sup>st</sup> January 2016. On 28<sup>th</sup> January 2016

she applied for further leave to remain in the UK as the partner of a British citizen [JM] born on 28<sup>th</sup> April 1983 and as the parent of her British citizen child. She was refused on 15<sup>th</sup> April 2016 and her appeal then came before Judge Bradshaw.

4. Judge Bradshaw recorded that the claimant was very emotional and upset and her evidence was somewhat chaotic. Basically, she has had a drug problem from the age of 24, was clean after a year and has been receiving treatment since. Her partner also developed a drug problem, whilst the couple were living together in the US, and they decided that it was best for the family to help him return to the UK for treatment to seek help for his drug addiction problems. He came back on 14<sup>th</sup> September 2014 but the couple remained in constant contact. They made arrangements to meet in Australia in May 2015 but his visa was refused and the claimant then decided to travel to the UK to be with him. They are both in therapy here.
5. The claimant's partner's family is in the UK and he works, having several jobs through agencies, and he studies on an IT course. The claimant herself is estranged from her mother but has a sister in Australia. Both the claimant, her partner and her partner's mother all gave evidence. The judge accepted that the evidence overall was consistent and credible. She recognised that the claimant had failed to produce any independent medical evidence and had not provided any evidence of failed visa applications for her partner nor indeed evidence of the caution which he was said to have received in the USA for possession.
6. The judge wrote as follows:

“Nationality is not a trump card but it is not enough to say that E can readily adapt to life in another country and without her father if the appellant had to return to apply for entry clearance. The appellant did not present any cogent arguments that she cannot return to the US with or without E but the question for me to answer is whether it is reasonable to expect the child to leave the UK and whether it is proportionate to require the appellant to return to the US to apply for entry clearance.

It is undoubtedly in the best interests of the child to be with both parents if that is possible; to have stability and continuity of social and educational provisions; to not disrupt ties she has developed in the UK.

It is not necessarily unlawful to require return to apply because the rationale behind the policy is to deter others from entering without entry clearance. However it is necessary to consider the prospective length of separation and the degree of family disruption which is invariably a highly relevant factor in the assessment of proportionality.

[JM] is working and it would appear he might be able to meet the financial requirements but when? He wants to work full-time and on a full-time contract but he must keep up his ongoing addiction treatment. He is unlikely to be able to obtain a visa to return to the US in his particular circumstances; he has applied twice and been refused. There is no certainty as to how long any application by the appellant for entry clearance may take to resolve.

Weighty reasons are required to justify separating a parent from a lawfully settled minor child as here.

E is very young and necessarily more focused on her parents but she has already suffered a separation from her father and they missed each other. Given their history of addiction

both the appellant and [JM] could be said to be vulnerable. The appellant clearly and credibly demonstrated vulnerability when giving evidence. [JM] is doing well with work but needs the stability of his wife and child as much as the appellant E do. His mother's evidence on this matter was compelling.

I find having considered all the evidence in the round and having weighed the factors on both sides that it is not reasonable to expect E to have to leave the UK nor is it proportionate to separate the family and require the appellant to return to the US to apply for entry clearance when the chances of success are uncertain and the length of consequent separation could be considerable."

7. On that basis she allowed the appeal.

### **The Grounds of Application**

8. The Secretary of State sought permission to appeal on the grounds that the judge had failed to resolve a conflict of fact having allowed the appeal on the premise that the claimant's partner could not return to the US with the family if she were returned due to the difficulties he has encountered with US immigration. The claimant has not provided any objective evidence of her claims regarding her partner's visa applications or police caution or of her medical requirements which also stand in the way of her return, or of the claims that her partner could meet the financial threshold. Given that she relied heavily on these matters and given how easy it would have been to obtain such evidence it is submitted that they cannot be given any weight in the overall assessment. If the claimant's partner cannot evidence his claims of difficulties with US immigration there is no reason why the claimant, her partner and child cannot return to the USA as a family unit.
9. Second, the judge failed to conduct a proper assessment of the claimant's credibility. The judge noted that the claimant did not fully disclose her situation to the Entry Clearance Officer which should weigh heavily against her general credibility but the judge failed to take this into account. The judge found the claimant to be a chaotic and emotional witness and later that she was unconvincing, factors which should have been taken into consideration when assessing overall credibility.
10. Permission to appeal was refused by Judge Hodgkinson on 8<sup>th</sup> January 2018 but subsequently granted upon reapplication by Upper Tribunal Judge Kebede on 19<sup>th</sup> March 2018.

### **The Hearing**

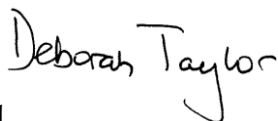
11. The claimant did not appear. I am satisfied that she was served with notice at her last known address and there is no explanation for her absence. I decided to proceed.
12. Mrs Pettersen relied upon her grounds. She submitted that the child was not being required to leave the UK and could remain here with her father and her grandmother. She asked that the decision be overturned.
13. I conclude however that the grounds amount to a disagreement with the decision. Although they state that the judge failed to resolve a conflict of fact, the real complaint is that the judge failed to find in the Secretary of State's favour.

14. The judge recorded the Presenting Officer's arguments that the claimant had failed to produce independent medical evidence to support her assertions. She observed that certain aspects of her evidence were unconvincing. Nevertheless the judge, having heard the oral evidence, was entitled to conclude that the claimant had given consistent and credible evidence about the matters in dispute which were fully supported by the evidence of her husband and perhaps more importantly, by her mother-in-law. The judge said that Ms Atkinson's evidence was credible and compelling. Given the health problems of the claimant, and the manner in which she gave evidence, it is perhaps unsurprising that she was not sufficiently organised to obtain documentary evidence in support of her claims. The judge could have found that the lack of objective evidence was sufficiently material so as to lead her to conclude that the claimant was not telling the truth. However she was equally entitled to find that she was being truthful, not least because she was consistent with all of the other witnesses.
15. So far as the claimant not fully disclosing her situation to the Entry Clearance Officer, it was her evidence that at the time when she applied for entry clearance the couple were estranged and she did not know what she would find when she saw him.
16. The grounds do not criticise the judge's approach to the law. They argue that the judge was not entitled to find the claimant's evidence to be credible. However, for the above reasons, they are not made out.

### **Notice of Decision**

The original judge did not err in law. Her decision stands. The Secretary of State's appeal is dismissed.

No anonymity direction is made.



Signed

Date 31 August 2018

Deputy Upper Tribunal Judge Taylor