



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/15316/2016

THE IMMIGRATION ACTS

Heard at North Shields

On 13 March 2018

**Decision & Reasons
Promulgated
On 15 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**D. H.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Boyle, Solicitor, Halliday Reeves Law Firm

For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Ethiopia who applied for a grant of discretionary leave to remain in the UK as an overstayer. That application was refused on 2 June 2016. His wife and children were however granted discretionary leave to remain in the UK on 2 June 2014, and this was subsequently varied with the result that leave was extended to expire on 16 December 2019. It was always accepted by the Appellant that he did not qualify under the Immigration Rules for a grant of leave to remain [16]; his appeal against the refusal was advanced on Article 8 grounds. That appeal came before First tier Tribunal Judge Head Rapson on 6

November 2017, and it was allowed by decision promulgated on 24 November 2017.

2. The Respondent sought permission to appeal from the First tier Tribunal on the extremely brief ground that the Judge *"had offered no reasoning whatsoever for the finding that the appellant and his wife were credible and the decision was disproportionate."* Thus it was asserted the Respondent was unable to identify why the appeal had been allowed.
3. That application for permission came before Designated First tier Tribunal Judge McCarthy on 11 January 2018. He rejected that ground, as drafted, concluding that adequate reasons had been offered for the credibility findings, and thus for the Judge's acceptance of the relationships relied upon between the Appellant, his wife, and his children. He rejected the assertion that the Judge needed to have done more in this respect, and concluded that she had undertaken an exercise to balance the interests of the members of the family against the public interest. That disposed of the challenge raised in the grounds, and ordinarily one would have expected a refusal of permission to appeal to have followed. The Designated Judge went on however to conclude that it was instead arguable that the Judge had failed to properly identify, and then balance, the public interest considerations, because the Judge had not dealt with either; the reasons why the Immigration Rules were not met, the Appellant's immigration history, or, the fact that neither the Appellant's wife nor his children were British citizens. Thus it was concluded the Judge had failed to consider the reasonableness or otherwise of the expectation that the children should leave the UK to live with their father in Ethiopia.
4. Before me Mr McVeety accepted that permission to appeal had not been granted to the Respondent on the basis of the grounds as drafted. He confirmed that upon due reflection the Respondent did not seek to renew the original challenge, and accepted the Designated Judge's view that it was unarguable.
5. Turning then to the grant of permission as framed by the Designated Judge, Mr McVeety accepted that he was in some difficulty in adopting the criticisms of the decision that it contained. It had been confirmed to the Judge at the outset of the hearing in the First tier Tribunal that the Appellant did not meet the requirements of the Immigration Rules [16]. The Judge had dealt expressly with the Appellant's immigration history [8-15, 31-34], and the lack of British citizenship of his wife and children [1 & 9]. Indeed it was plain when the decision as read as a whole that the Judge was well aware that the entire family were citizens of Ethiopia, and that she correctly saw the central issue of primary fact in the appeal as being whether the Appellant enjoyed the genuine and subsisting spousal and parental relationships relied upon and which were disputed by the Respondent.
6. Since the Appellant's wife and children had twice been granted discretionary leave to remain by the Respondent [15], and it was accepted

that both of his children were “qualifying children” for the purposes of section 117, the question that arose for the Judge’s decision in consequence was whether or not it would be reasonable to expect the children to leave the UK; AM (Pakistan) [2017] EWCA Civ 180. In the circumstances Mr McVeety acknowledged that the only criticism of the decision that he could advance was that the Judge should have added perhaps only a sentence to make it clear to the reader beyond any doubt, that having found the relationships relied upon did indeed exist, she was satisfied that in all the circumstances of the appeal it would not be reasonable to expect the children to leave the UK; s117B(6). As he very fairly accepted, when the decision is read as a whole, it is tolerably clear to the reader that this was indeed the Judge’s approach, and her decision.

7. In the circumstances, and notwithstanding the terms in which permission to appeal was granted, in my judgement the Judge did properly consider the competing interests and balanced them, giving adequate reasons for her conclusions. I therefore dismiss the Respondent’s challenge, and confirm the decision to allow the appeal on Article 8 grounds.
8. An anonymity direction is made in the interests of the children.

Notice of decision

The decision promulgated on 24 November 2017 did not involve the making of an error of law sufficient to require the decision to be set aside. The decision of the First tier Tribunal to allow the Article 8 appeal is accordingly confirmed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any of the individuals referred to in this decision. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 13 March 2018

Deputy Upper Tribunal Judge J M Holmes