



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

Appeal Number: HU/17519/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 27 February 2018  
Prepared 27 February 2018**

**Decision & Reasons  
Promulgated  
On 28 March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**GURMEET [S]  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms J Isherwood, Senior Presenting Officer

For the Respondent: Mr B Hawkin, counsel instructed by Chatham Chambers  
Solicitors

**DECISION AND REASONS**

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.
2. The Claimant, a national of India, date of birth [ ] 1981, appealed against the refusal of leave to remain made by the Secretary of State on 27 June

2017. The appeal against that decision came before First-tier Tribunal Judge Ghani (the Judge) who, on 14 August 2017, allowed the appeal of the Claimant and the consequence was that the dependants, that is his wife and two children, were successful as dependants. The Claimant's wife is [TK] and the two children are [JK] and [JS] aged about 8 and 4 years of age at the time.

3. It is clear that at the date of application the eldest child [JK] had not yet reached 7 years of age but at the date of decision had reached 7 years of age and was 8 or thereabouts at the date the matter came before the Judge.
4. The Secretary of State sought permission to challenge the decision of the Judge and permission to appeal was given by Upper Tribunal Judge Rimington on 1 November 2017. A Rule 24 response was made on behalf of the Claimant on 12 December 2017, essentially supporting the Judge's decision.
5. There are two principal challenges made by the Secretary of State: first, the Judge erred in law in the assessment of the claims in relation to the Claimant and his dependants and made erroneous findings in relation to the application of Article 8 ECHR and Section 117B(6) of the NIAA 2002 as amended. Secondly, permission was given on the basis that the Judge had considered the issue of statelessness of the two children when the evidence was simply not there and the Judge was unable to make a proper assessment as would be required with evidence and identified in the decision in *K* [2017] EWHC 1365 (Admin).
6. The arguments have essentially turned on the sufficiency or adequacy of the reasoning provided by the Judge. I should say that the format of the decision is unhelpful in terms of layout and presentation such that it ultimately reflects in the sufficiency of the reasoning for his decision on the Claimant's case. Whilst the Judge seeks to recite relevant law,

ultimately he does not properly set out sufficient and adequate reasons as to why he found it unreasonable for the child, [JK] to be removed, applying the considerations that arise under Section 117B and 117D on the basis that [JK] was a qualifying child. The Judge also, in looking at that exercise of reasonableness, simply ignored as far as I can see the assessment which was material of the immigration status and history of the Claimant and his wife and the implications of them being effectively overstayers since February 2012, some more than six years during which time of course they had been responsible for enabling their two children to put roots down in the United Kingdom and enter into education and receive those other necessary consequences of being a child in the United Kingdom. There is no analysis in any meaningful way of that issue of reasonableness so as to assess whether or not there was need to consider further the public interest in the overall proportionality assessment. I am satisfied that the Judge failed to address properly the considerations that arise in *MA (Pakistan)* [2016] EWCA 6705 and *AM (Pakistan)* [2017] EWCA Civ 180.

7. It seems to me also that the Judge probably failed to consider the significance of the Secretary of State's then guidance but that was not the issue argued before me and it is unnecessary for the purposes of my decision to reach a concluded view on it: Although there is obviously reference in the decision to aspects of that guidance. In the circumstances therefore I find on that point alone the Original Tribunal's decision cannot stand.
8. The second point raised over the stateless or potential statelessness and its relevance to the assessment of reasonableness, or possibly even proportionality, proceeds on an erroneous basis because, quite simply, there was no evidence to show that they were stateless: First, the elder child, [JK] is the holder of an Indian passport; and, secondly, because there is the issue of registration of [JS]'s birth and whether in those circumstances he will in due course, if an application is made, be

registered as an Indian child and national. Those are matters which the Judge did not have evidence upon and ultimately the comments he made insofar as they were material are undoubtedly speculative. I am satisfied therefore that the issue of statelessness, if it really is arguable, was not properly addressed at that stage by the Original Tribunal.

## **DIRECTIONS**

- (1) The matter will need to be remade in the First-tier Tribunal. List Manchester First-tier Tribunal IAC. Not before FtTJ Ghani.
- (2) Any further evidence to be served not later than **14 working days** before a further hearing and served on the IAC and the Secretary of State.
- (3) If the Secretary of State wishes to raise any further issues and serve any further documents or skeleton arguments that should take place not later than **7 working days** before the further hearing.
- (4) If need be, there can be a CMR to deal with the case.
- (5) No interpreter required.
- (6) Time estimate – two and a half hours.

## **NOTICE OF DECISION**

The appeal is allowed to the extent it is to be remade in the FtT (IAC). No anonymity direction is made.

Signed

Date 20 March 2018

Deputy Upper Tribunal Judge Davey