



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/21155/2016

THE IMMIGRATION ACTS

Heard at Field House
On 20 July 2018

Decision & Reasons Promulgated
On 10 September 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT)

Appellant

and

BILAL [Y]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: Mr Z Raza, Counsel instructed by Marks & Marks Solicitors

DECISION AND REASONS

1. The respondent (hereafter the claimant) is a citizen of Pakistan. On 22 August 2016 the appellant (hereafter the Secretary of State (or SSHD) refused his application for leave to remain on family and private life grounds. The claimant's appeal came before Judge Law of the First-tier Tribunal who, in a decision posted on 16 February 2018, allowed his appeal on human rights grounds.

2. Then SSHD's grounds contend that the judge erroneously treated the best interests of the claimant's child as a "trump card" and failed to attach proper weight to the public interest factors which resonated in this case because the claimant had been found to have used deception in the English language test in October 2012. A further consideration was that the claimant did not live with the child.
3. I am grateful to both parties for their succinct submissions. Both made reference to the view expressed by the FtT Judge who granted permission (Judge Holmes) that "[the concession relied upon in **SF and Others (Guidance, post-2014 Act)**[2017] 120 (AC) has since been withdrawn in **VM** [2017] EWCA Civ 255 and the policy referred to therein has been withdrawn and rewritten."
4. The SSHD's grounds commence unpromisingly in that it can be seen that at paragraph 29 the FtT Judge himself quoted from Lady Hale's observation in **ZH (Tanzania)** [2011] UKSC 4 that the best interests of the child were not a paramount consideration and also her other observation that nationality was not a "trump card" (paragraph 37).
5. Furthermore, the judge's reasoning clearly shows that the judge understood that when conducting the proportionality assessment the best interest of the child was only one of the factors relevant to that assessment (see paragraphs 32 and 37).
6. It is also important to note what the judge found at paragraph 35

"Furthermore, the situation of the child is governed by section 117B(6) of the 2002 Act since she is a qualifying child, as a British citizen under the age of 18; although she lives with her mother rather than with the appellant and the latter's rights have not yet been determined by the court, I find that the appellant does have a "parental relationship" with her because of the Tribunal decision in **R (on the application of RK) (s.117B(6); "parental relationship")** IJR [2016] UKUT 00031 where it was held that it is not necessary for an individual to have "parental responsibility" in law for there to exist a parental relationship. Using the language of paragraph E-LTRPT.2.4. I am satisfied that the appellant has direct access in person to his daughter."

- a finding which the SSHD's grounds do not challenge in any respect.

7. However, the major difficulty for the SSHD's grounds is that her own policy as expressed in the IDIs on Family Migration at Section 11.2.3 accepted that it would be unreasonable to expect a British citizen child to leave the UK. It was this policy that the judge relied on at paragraph 40.
8. Neither the judge nor the SSHD's grounds referred to the reported decision **SF and Others** which concluded that so long as the SSHD maintained her policy, it could not be said that there was a public interest in removing the parent of a British citizen child absent criminality or poor immigration history.

9. Judge Holme's grant of permission suggested that the SSHD's policy has been withdrawn as a result of the Court of Appeal decision in **VM (Jamaica)**. I beg to differ. In this decision Sales LJ concludes that the concession made by the SSHD in **Sanade** [2012] UKUT 48 (IAC) was skewered and did not accurately reflect the case law of the Court of Justice of the European Court of Justice. Sales LJ also records that the SSHD withdrew that concession before their Lordships. That is correct. But it remains that following this judgment the SSHD did not withdraw her published policy and at the date of hearing and decision before the judge, it was still extant (indeed even the revised version of the policy as from 22 February 2010 it would still cover the claimant's case (subject to one caveat mentioned below)). Whether or not the concession made in **Sanade** has now been withdrawn, the Home Office policy was not and hence the Tribunal's assessment in **SF and Others** that the policy expresses the SSHD's understanding of the public interest remains pertinent.
10. The SSHD's policy in its pre- and post- February 2018 versions makes exceptions for persons who have a history of criminality or a poor immigration history. The claimant in this case has no criminal history. It might have been open to the SSHD to have argued that the claimant's use of deception in 2012 meant he fell within the exception based on poor immigration history, but the grounds do not assert this, nor did Mr Bramble seek to assert it during discussions about Home Office policy.
11. Upon analysis, the SSHD's grounds fail to identify a material error of law and accordingly the decision of the FtT Judge to allow the claimant's appeal must stand.

No anonymity direction is made.

Signed

Date 31 July 2018

