



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/00882/2016
IA/00884/2016
IA/00886/2016

THE IMMIGRATION ACTS

Heard at Field House
On 9th March 2018
Oral Decision

ALLOWED FOR APPELLANT
On 18th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JUBER [C]
SHAMIMA [C]
[S C]

(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer
For the Respondents: Mr T Shah of Taj Solicitors

DECISION AND REASONS

1. The Respondents to this appeal whom I shall refer to as the [C] family are citizens of Bangladesh. Their dates of birth are recorded respectively as: 20th September 1970, 29th December 1984 and 16th April 2008. The first two Respondents are husband and wife

and the Third Respondent their daughter. Application was made for leave to remain on human rights grounds. A decision was made refusing their applications and they appealed. The appeals were heard by Judge of the First-tier Tribunal Sweet sitting at Taylor House on 13th June 2017. Consideration was given to Appendix FM and paragraph 276ADE but eventually the appeal succeeded having regard to paragraph 276ADE but the judge said that even if it were otherwise the appeals would have succeeded under Article 8.

2. Not content with that decision the Secretary of State made application for permission to appeal; the notice being dated 4th July 2017. Given the proper concession made on behalf of the [C] family it is not necessary for me to say in detail what the grounds were but essentially the Secretary of State took issue with the basis upon which the appeal was allowed under paragraph 276ADE and took exception to the proportionality assessment.
3. On 27th December 2017 the Judge of the First-tier Tribunal Parkes granted permission. He agreed that the grounds showed an arguable case that the judge had given insufficient reasoning and also that the judge had arguably erred in suggesting that the fact that the Third Appellant had been in the United Kingdom for over seven years appeared of itself to have determined the case.
4. I gave a preliminary view that there was inadequate reasoning and that given the conflicting authorities in relation to paragraph 117B(6) as to where the focus lies in 117B(6)(b), that is to say whether on the child itself or whether more generally, that there were difficulties with the case but on the basis of the authorities as they now are that is to say **MA Pakistan [2016] EWCA Civ 705** the judge was required to give considerable weight to the fact that there was a genuine and subsisting parental relationship with a qualifying child but that was not the end of the matter. Consideration needed to be given to the other factors in 117B, which was not done. Whether **MA Pakistan** is correct is a matter for the Supreme Court (judgment is awaited in the case of **NS Sri Lanka**) but for the moment the position is as set out above and so the judge erred; a matter with which Mr Shah does not take issue.
5. He quite properly concedes the error of law and that it is material. That there is an error of law means that I have to decide whether to remake the decision or remit it. In this case given the guidance which is yet to come from the Supreme Court the proper course in my judgment is to remit the case to be heard de novo in the First-tier Tribunal at Taylor House and make a direction that this case should not be listed until the guidance of the Supreme Court in **NS Sri Lanka**.
6. I shall make notes on the file that the Resident Judge at Taylor House should make appropriate directions therefore for future listing of the appeal.

Notice of Decision

The decision of the First-tier Tribunal contained material errors of law. The decision is set aside to be remade de novo.

No anonymity direction is made.

Signed

Date: 15 May 2018

A handwritten signature in black ink, appearing to be 'AZZ', written in a cursive style.

Deputy Upper Tribunal Judge Zucker