



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

Appeal Number: PA/00721/2017

**THE IMMIGRATION ACTS**

**Heard and dictated at Field House**

**Decision & Reasons**

**On 20<sup>th</sup> February 2018**

**Promulgated**

**On 2<sup>nd</sup> March 2018**

**Before**

**THE HONOURABLE MR JUSTICE NICKLIN  
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)  
UPPER TRIBUNAL JUDGE BLUM**

**Between**

**PIM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Billie, Legal Representative, A. Billie Law Ltd

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

[extemporary judgment given at hearing]

1. The appellant in this case, in respect of whom an anonymity direction has been made, is a citizen either of Zimbabwe or South Africa, it does not matter for the present purposes what, and is presently 40 years old. He arrived in the United Kingdom on 12<sup>th</sup> May 2002, travelling on a South

African passport. He claimed asylum, but that claim was refused, and an appeal dismissed.

2. The appellant was convicted on 9<sup>th</sup> October 2007 of possession of a counterfeit passport. He was sentenced to ten months' imprisonment. On 26<sup>th</sup> March 2013, the appellant applied for leave to remain outside the Immigration Rules in a slightly different name, his second and first names had been transposed. The application was rejected as a mandatory part of that form had not been completed. He reapplied for leave on 2<sup>nd</sup> August 2013 based on ten years' family and private life in the UK. That application was refused.
3. Notice of deportation was served on him on 5<sup>th</sup> November 2015. On 9<sup>th</sup> January 2017, the Secretary of State refused a protection and human rights claim made by the appellant on 29<sup>th</sup> December 2015. The appellant's evidence was that he was married in 2006, he has a daughter, S, now aged 7 and both his daughter and wife are British citizens. The appellant appealed the decision to refuse his protection and human rights claims to the First-tier Tribunal. His appeal was heard by First-tier Tribunal Judge Robertson on 22<sup>nd</sup> November 2017 and the judge promulgated the reasons on 6<sup>th</sup> December 2017.
4. The judge correctly noted, at paragraph 13 of the decision, that paragraphs 399 and 399A of the immigration rules (HC395) did not apply because the appellant's sentence was below twelve months. Nevertheless, in paragraph 45, the judge addressed the question of whether, under Section 117C, it would be unduly harsh for S to remain in the UK without the appellant. She found that it would not be. The judge dismissed the appellant's appeal on asylum and humanitarian grounds.
5. The appellant's application for permission to appeal was lodged on 20<sup>th</sup> December 2017. Various grounds were advanced but the first was a challenge to the judge's conclusions in relation to Section 117C. It was submitted that, having found correctly that the appellant was not a foreign criminal (as he had not been sentenced to more than twelve months' imprisonment, had not been convicted of an offence that caused serious harm and was not a persistent offender), the judge's consideration of Section 117C was erroneous. She should have assessed the applicant's Article 8 claim in accordance with Section 117B, and, in particular, Section 117B(6), which provides:

"In the case of a person who is not liable to deportation, the public interest does not require the person's removal where -

- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
- (b) it would not be reasonable to expect the child to leave the United Kingdom."

Qualifying child for these purposes is defined in Section 117D as including a British citizen.

6. In paragraph 45, the First-tier Tribunal Judge found that the appellant did have a genuine and subsisting relationship with S. Permission to appeal was granted by First-tier Tribunal Judge Dineen on 5<sup>th</sup> January 2018 on the grounds we have identified above. Permission to appeal was refused on grounds 7 to 9.
7. For the reasons that have been advanced, we find that the First-tier Tribunal did err in determining that Section 117C governed the decision she had to make. That section did not apply because the appellant did not fall into the category of foreign criminal. His claim should have been assessed by reference to the criteria in Section 117B and in particular Section 117B(6).
8. Therefore, we will allow the appeal. We will remit it to the First-tier Tribunal but with the direction that the First-tier Tribunal is only considering the Article 8 grounds.

### **Notice of Decision**

**The appeal is allowed to the extent that the First-tier Tribunal materially erred in law in its consideration of the article 8 human rights claim. The case is remitted to the First-tier Tribunal, before a judge other than Judge of the First-tier Tribunal M Robertson, to reconsider afresh the article 8 appeal only.**

### **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 member of his family. 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:  
2018

Date: 22 February

The Honourable Mr Justice Nicklin