



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/03895/2018

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
On 20 March 2019**

**Decision and Reasons Promulgated

On 22 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

BAHRA [O]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mohzam of Twinwood Law Ltd

For the Respondent: Mr C Bates Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Hudson promulgated on 12 November 2018, which dismissed the Appellant's appeal against a refusal of a protection claim on all grounds.

Background

3. The Appellant was born on 5 July 1986 and is a national of Iraq.
4. On 29 October 2017 the Appellant applied for asylum on the basis that she was at risk from her parents who did not approve of her marriage to [KI] who is a British citizen and by whom she had a son whose date of birth is 3.4.2016.
5. On 8 March 2018 the Secretary of State refused the Appellant's application.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Hudson ("the Judge") dismissed the appeal against the Respondent's decision.
7. Grounds of appeal were lodged arguing that the Judge failed to consider whether s 117B 6 of the Nationality Immigration and Asylum Act 2002 was met as her child was a British Citizen at birth by virtue of s2 (1) (a) of the British Nationality Act 1981 as the Judge had failed to assess whether it was reasonable for the child to return to Iraq with his mother given the guidance in KO (Nigeria) [2018] 1 WLR 5273.
8. On 29 November 2018 First-tier Tribunal Judge Blundell gave permission to appeal.
9. In a Rule 24 Notice dated 19 December 2018 the Respondent in essence conceded that there was an error of law and invited the Tribunal to proceed to a hearing to determine whether the Appellants child should be expected to return to Iraq with the Appellant.

10. Before me Mr Bates conceded that in the light of current case law of KO and JG (s.117B(6): “reasonable to leave” UK) Turkey [2019] UKUT 00072 (IAC) Rev 1 the Appellant would succeed under s 117B6 as it would not be reasonable to expect the British citizen child to leave the UK.

Legal Framework

11. The Appellant’s appeal was pursuant to Section 82(1) (b) of the Nationality, Immigration and Asylum Act 2002 (‘the 2002 Act’) which provides that a person may appeal to the Tribunal where the Secretary of State has decided to refuse a human rights claim. S84 of the Act provides that an appeal under s82(1)(b) must be brought on the ground that a decision is unlawful under section 6 of the Human Rights Act 1998.
12. Section 117A (2) of the 2002 Act provides that where a Tribunal is required to determine whether a decision made under the Immigration Acts would be unlawful under section 6 of the Human Rights Act 1998 it must, in considering ‘the public interest question’, have regard in all cases to the considerations listed in section 117B of the Nationality, Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014). Section 117 (3) provides that the ‘public interest question’ means the question of whether an interference with a person’s right to respect for private and family life is justified under Article 8(2).
13. The S117B considerations in so far as they are relevant to this appeal are as follows:

“(6) 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.”

Section 117B6

14. The definition of “qualifying child” is found in section 117D:

“qualifying child” means a person who is under the age of 18 and who-

(a) is a British citizen, or

(b) has lived in the United Kingdom for a continuous period of seven years or more;”

15. In relation to the Appellants child being a British Citizen the Appellant relies on the British Nationality Act 1981 which provides:

“2. Acquisition by descent.

(1) A person born outside the United Kingdom after commencement shall be a British citizen if at the time of the birth his father or mother—

(a) is a British citizen otherwise than by descent;”

Finding on Material Error

16. Having heard those submissions I reached the conclusion that the Tribunal made a material errors of law in that it failed to recognise that the Appellants child was a British Citizen at birth by virtue of the British Nationality Act. The Judge was therefore required as part of the proportionality exercise to determine whether the Appellant could succeed under the provisions of s 117B 6 of the Nationality Immigration and Asylum Act 2002.
17. I therefore set aside the Article 8 assessment and reheard the evidence on that discrete issue all other findings having been preserved.
18. Mr Bates readily conceded that the Home Office Policy is that it is not reasonable for a British Citizen child to be required to leave the UK and the appeal should succeed.
19. In this case I make clear that this was an appropriate concession to make this is a finding I would have made whether it was conceded or not. I would inevitably have had to consider the best interests of the child in question and the starting point is that it is in his best interests to be brought up by both of his parents. I noted that he attended court with his mother the Appellant and his father. The Appellant and her husband are I accept in a subsisting relationship and she is clearly pregnant. It is also of course in his best interests to have a

relationship with his sibling when he or she is born. It is in the child's best interests to enjoy the benefits of his British Nationality that it is undisputed he derives from his father. I am also satisfied that in general terms it is in his best interests to remain in the UK where it is safe and stable.

20. In determining whether therefore whether it is reasonable for the child to return to Iraq with his mother I must give significant weight to his best interests. I acknowledge that while the Appellant has no status in the UK the Appellants husband is a British citizen so unlike the circumstances in KO which largely dealt with couples neither of whom had the right to remain in the UK in this case there is only one parents who has no status as in JG.
21. Having found that it is not reasonable for the child to leave the UK the Appellant meets the requirements of paragraph 117B6 and in accordance with what is said in paragraph 34 of TZ and PG [2018] EWCA Civ 1109 it would be disproportionate to remove the Appellant and she succeeds under Article 8.

Decision

22. **There was an error on a point of law in the decision of the First-tier Tribunal with regard to Article 8 such that the decision is set aside**
23. **I remake the appeal.**
24. **I allow the appeal on human rights grounds.**

Signed

Date 20.3.2019

Deputy Upper Tribunal Judge Birrell

TO THE RESPONDENT

FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award as the DNA evidence that the child was that of the British Citizen father was not produced until the appeal.

Signed

Date 20.3.2019

Debra Birrell