



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: **UI-2022-003780**

FtT No: PA/51379/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 16th of November 2023

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

S S H D

Appellant

and

S M

(anonymity order in place)

Respondent

Heard at Edinburgh on 8 November 2023

For the Appellant: Mr M Diwyncz, Senior Home Office Presenting Officer

For the Respondent: Mr N Ruddy, of Jain, Neil & Ruddy, Solicitors

DECISION AND REASONS

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. The appellant appealed to the FtT against refusal of her protection and human rights claims. At the hearing before FtT Judge Agnew on 8 April 2022, she conceded her protection claim and proceeded on the basis of article 8 only, focused on the best interests of her 3 children. They, and her husband, M I, who remains subject to a deportation order, were categorised as “dependents” on her claim. The Judge’s decision dated 21 April 2022 allows the appeal “on human rights grounds”.
3. The SSHD applied for permission to appeal to the UT. The grounds open by saying that “the appellant” was convicted of certain offences [committed by M I, not by S M], and that “for avoidance of doubt”, the grounds “are in respect of Mr

M I only". The grounds are then developed in terms of the tests applicable, in respect of children, to an appeal against deportation.

4. On 11 August 2022 FtT Judge Loke granted permission, on the view that Judge Agnew arguably did not apply the correct test, applying section 117B(6) of the 2002 Act "which applies to a person not liable to deportation", and that arguably to "assume" that the effect on the children would be unduly harsh on "limited evidence" is an error in respect of the high threshold in section 117C. (It may be, although the matter is not now material, that the grant was made because of the impression given by the grounds that Judge Agnew had decided a deportation appeal by M I.)
5. The appellant's response under rule 24 to the grant of permission points out that the challenge relates only to the appellant's husband and that it is undisputed that "the decision should be preserved as far as it relates to the [appellant] and her dependent children".
6. I observed at the outset of the hearing that the grounds appeared to be misconceived. Mr Diwyncz did not withdraw them, but he was unable to persuade me that there was anything to be derived from the grounds by which the FtT's decision, allowing the appellant's appeal on human rights grounds, might be set aside for error on a point of law.
7. Even if the reference to M I as an "appellant" might be struck out as a slip, the grounds explicitly exclude any challenge in respect of S M. The grounds are plainly self-defeating.
8. The appellant and her husband have a deplorable immigration history. The findings of the FtT on the best interests of the children and on undue harshness rest on flimsy foundations. The effect of the outcome on M I is obscure. However, all of that is beside the point.
9. The SSHD's appeal to the UT is dismissed. The decision of the FtT stands.
10. The FtT made an anonymity order, which is maintained herein.

Hugh Macleman
Judge of the Upper Tribunal, Immigration and Asylum Chamber
10 November 2023