



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003245

First-Tier Tribunal No:
HU/00188/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

17th November 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

Ali Zeeshan
(no anonymity order made)

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Mr Greer, Counsel instructed by

Heard at Phoenix House (Bradford) on 1 November 2023

DECISION AND REASONS

1. The Respondent is a national of Pakistan. On the 4th May 2023 the First-tier Tribunal (Judge Suffield-Thompson) allowed his appeal against a decision to refuse to grant him leave to remain on human rights grounds. The Secretary of State was granted permission to appeal against that decision on the 26th July 2023.

2. This case presented an unusual set of facts. The Respondent arrived in the United Kingdom in June 2015 with leave to enter as a student. That leave eventually expired and he became an overstayer. He did not leave the UK, instead making a series of applications to regularise his position, the latest of which led to the present appeal. The basis of the Respondent's Article 8 claim was the 8 years' worth of private life that he has developed in the UK, but in particular his relationship with the Shah family of Leeds. He met Mr Hasan Saeed Shah in 2018 and they became firm friends. He formed relationships with the rest of Mr Shah's family. In April 2021 they invited him to move into their home. Mr Shah himself has since married and left, but the Respondent has remained, becoming primary carer to Mr Shah's two younger siblings, and offering care and emotional support to Mr Shah's mother, who is suffering from a number of mental and physical health issues. Those medical problems stem in no small part from her personal history, set out by her son in his witness statement as follows:

My mother suffers with many health issues including severe psychological issues, namely depression anxiety and panic attacks. These issues started when she was a teenager and were the result of a traumatic experience at that time. Her family were not supportive and blamed her. Consequently, we have no contact with them as they severed all ties with her long ago.

4. As a consequence, my mother's childhood was very troubled and she fled the family home and was taken into care. She has explained how she was placed at different homes for a period of some years and so, her life was very uncertain and confusing. She tried to move on in life, converted to Islam and relocated to Bradford, where she met my father, Saeed Ahmed Shah. They were married in June 86 but her family disapproved and they threatened my parents.

5. My parents' relationship became strained over time and my mother suffered domestic abuse at the hands of my father. She had no family to turn to for years, began to blame herself and continued to suffer with depression....

3. At the hearing before the First-tier Tribunal the Respondent gave live evidence, as did Mr Shah and his mother Mrs Shah. Their evidence was supported by letters from professionals such as the family GP. The Secretary of State did not field a representative and so none of the evidence was challenged. The Tribunal accepted it all to be perfectly credible. It found as follows.
4. As to the facts, the Tribunal found that the children (then aged 12 and 13) had, by the date of the appeal, known the Respondent some 5 years. He was essentially acting *in loco parentis* and they had formed a close bond with him. He was considered to be a member of the family now. He deals with all family matters such as shopping, housework, medical appointments, helping the children with the homework, doing the school runs and children's outings. He even goes to the children's parent teachers' meetings. Mrs Shah was described as being very slow to trust people and vulnerable, with mental and physical health issues. She trusted the Appellant and regarded him as a 'God-send' for the support he gives her and her family. Mr Shah told the Tribunal that both his mother and stepfather had serious health issues and were dependent upon the Respondent. Mr Shah said that since his marriage he has himself

suffered from ill health so he is very grateful to the Respondent for being able to step in. He gave evidence that he believed that his younger brother and sister would be negatively affected psychologically if the Respondent had to leave. The witnesses all concurred in their view that the Respondent was a full time carer for Mrs Shah and her children, and that if he were to leave the country social services would have to step in.

5. Having accepted all of these facts the Tribunal referred itself to the guidance in Ghising (family life - adults - Gurkha policy) [2012] UKUT 160 (IAC) and Singh [2015] EWCA Civ 630: there was no legal or factual presumption as to the existence or absence of family life for the purposes of Article 8. Nor is there any requirement of exceptionality. It all depended on the facts. In ZB (Pakistan) v SSHD [2009] EWCA Civ 834 the Court had emphasised that the proper approach was to consider family life as a whole, then the individual's place in that unit. The Tribunal found the decision in R (on the application of Aliyu) [2014] EWHC 3919 to be of particular assistance because it confirmed that those in *de facto* parental positions could have protected Article 8 family life with the children they care for. It then said this:

“49. I find in this case that the Appellant has been welcomed into this family as a quasi- family member. He does everything that a blood relative would do for this family. He is an uncle figure to the children and is heavily involved in their lives. I totally accept that there are no other family members or friends who can or are willing to support Mrs Shah and her children if he were to leave them.

50. I find that it would be negative to the welfare of the children both emotionally and in terms of their daily care if the Appellant were to leave them. I accept that he shops, cooks, cleans, takes the children to and from school, attends their medical appointments and parents teachers meetings and assists them with their homework. I find that this is a case where Social Services would need to step in if he were to leave which is not only not in the children's interests but not in the interests of the public purse either.

51. Mrs Shah has clearly formed some form of very close and trusting relationship with the Appellant that means he provides her with every form of care including personal care. Again, if he is not there to provide this I find that outside agencies would need to be involved . I also find that being separated from him would have a negative impact on her already fragile mental health. I have no reason to question the content of the GP letter. I also had a letter from Dr M Wang dated 11 August 2022 that states that Mrs Shah has serious mental health issues and that she is referred to primary care”.

6. The Tribunal then considers matters weighing against the Respondent, specifically referring to public interest factors set out in s117B of Nationality, Immigration and Asylum Act 2002. Having done so it concludes that the refusal of leave would not be proportionate and the appeal is allowed.

The Grounds: Discussion and Findings

7. The first ground is that the First-tier Tribunal has “incorrectly treated the Appellant [Respondent] as having a parental relationship with the children”, despite the fact they live with their mother. Reliance is placed on the findings of the Upper Tribunal in Ortega (remittal; bias; parental relationship) [2018] UKUT 00298 (IAC), in particular headnote 3 which states:

“As stated in paragraph 44 of R (on the application of RK) v Secretary of State for the Home Department (Section 117B(6): "parental relationship") IJR [2016] UKUT 00031 (IAC), if a non-biological parent ("third party") caring for a child claims to be a step-parent, the existence of such a relationship will depend upon all the circumstances including whether or not there are others (usually the biological parents) who have such a relationship with the child also. It is unlikely that a person will be able to establish they have taken on the role of a parent when the biological parents continue to be involved in the child's life as the child's parents.”

8. This error, the Secretary of State submits, leads the Tribunal to conduct the proportionality balancing exercise on the basis that s117B(6) applies.
9. The second ground is really an extension of the first: that the Tribunal was not rationally entitled to conclude that the Respondent had a family life in the UK, given that he is unrelated to the Shahs.
10. The first finding I make is that there is absolutely nothing on the face of the determination to indicate that this appeal was allowed on the basis of s117B(6). There is no finding that these are qualified children, no formal finding that the Respondent has a genuine and subsisting parental relationship with them and certainly no statement to the effect that the public interest would not require his removal simply on the basis of the relationships he has with these children. It is clear from the decision that the proportionality balancing exercise was far more nuanced than that.
11. What the Tribunal does do is employ a range of terms to describe the Respondent's position within this family. He is described as a “quasi-family member” (see paragraph 49, also 5 and 27), and the Shah's as his “surrogate family” (54). In respect of the children it is said at paragraph 34 that he is “essentially acting *in loco parentis*” but this must be read in light of the Tribunal's clear acknowledgment that the children are of course living with their mother. In the context in which that is said it seems to me that the Tribunal had in mind the Respondent's role in looking after the children's day to day needs, attending school meetings etc. Elsewhere the term “uncle” is used, for instance in the following passage summarising Mr Shah's accepted evidence: “the children have formed a close bond with the Appellant. He is like an uncle figure to them” (paragraph 38). I find these interchangeable terms to be indicative of the sometimes indivisible nature of Article 8(1) rights. The Respondent's relationships with members of the Shah family were certainly an important part of his *private* life in the UK, and the use of the term “quasi” indicates the Tribunal's view that they were approaching something that could be termed a ‘family’ life. The extent to which that boundary might have been crossed does not, in fact, matter. That is because it is clear from the Tribunal's findings that this was a private life of great depth and quality, and that the relationships involved mean a lot to all

the people concerned. Whether they are termed part of the Respondent's 'private' or 'family' life is something of a pointless exercise in semantics, since the weight to be attached to the public interest in the balance against them remained the same, a matter I shall return to below. Accordingly I am not satisfied that either ground (i) or (ii) are made out.

12. The final tranche of grounds are concerned with First-tier Tribunal's approach to the public interest. It is said that it has "failed to attach the correct weight to the public interest factors outlined in Section 117B of the 2002 Act". In particular it is said that the Tribunal failed to determine or weigh the Appellant's financial independence, failed to attach little weight to the Appellant's private life and/ family life which has been established at all time when he had unlawful immigration status , and failed to "attach the requisite weight" to the maintenance of effective immigration control.
13. Section 117A of the Nationality, Immigration and Asylum Act 2002 provides that where a court is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8, the court must in particular "have regard" to the considerations listed in s117B. These considerations are:

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

- (a) are less of a burden on taxpayers, and
- (b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

- (a) are not a burden on taxpayers, and
- (b) are better able to integrate into society.

(4) Little weight should be given to—

- (a) a private life, or
- (b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(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.

14. There can be no doubt that the First-tier Tribunal had this provision in mind when it reached its decision. It sets it out in full at paragraph 17 of its decision, and then inserts the heading 'section 117B' into its consideration of proportionality. The question is whether it overlooked any of those specific considerations cited in the grounds.
15. As to s117B(1), I reject the contention in the grounds that the Tribunal overlooked this provision. It simply cannot be said that the Tribunal failed to recognise that the Respondent is in this country without leave, or that he has failed to meet the requirements of the immigration rules. Those facts are mentioned in 9 different paragraphs of this decision (1, 4, 6, 10, 24, 28, 29, 30, 53). At paragraph 53 the Tribunal says "I cannot and do not underestimate the real significance of the public interest in maintaining a firm but fair Immigration policy" and at 28 this:

28. I now turn to the final step which is to decide if the interference is proportionate to the legitimate public end sought to be achieved. In weighing up the competing considerations the **principle of legitimate Immigration control has substantial weight** and I need therefore in making this decision to strike a fair balance between the rights of the individual and the interests of the community which is inherent in the whole of the Convention.

(emphasis added). Whatever is meant by the "requisite weight" in the grounds, presumably that was it.

16. The next matter in issue is s117B(3). This is the question of whether the Tribunal considered the public interest in refusing leave to people who are not financially independent. I agree that there is nowhere in the decision where the Tribunal makes an express finding about whether the Respondent is 'financially independent'. That said, it is fair to acknowledge that it does say this:

53. I cannot and do not underestimate the real significance of the public interest in maintaining a firm but fair Immigration policy and **protecting the economic wealth of the UK**.

17. That is not of course the language of s117B but is more akin to that in Article 8(2) itself:

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of

national security, public safety or the **economic well-being of the country**, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

18. Given that the ‘public interest considerations’ listed in s117B are simply a domestic codification of Article 8(2), it is difficult to see why the Tribunal should be criticised for its language here. The broader question raised by the grounds is whether the Tribunal actually considered the consequences for the economy should the Respondent be granted leave to remain. It is worth noting that section 117B (3) states its own purpose to be twofold: preventing migrants from becoming a burden on the state, and the promotion of integration. As to the latter the Tribunal’s finding that he is well integrated is unchallenged. As to state funds it in fact concludes that the state would be burdened *in his absence*, since social services support would have to be sought for the care of the children and Mrs Shah herself, see paragraphs 50-51, and at 52 where - under the heading ‘section 117B’ - it says this:

“In caring for this family he is saving the State a large amount of money in having to provide support for the children and Mrs Shah”.

19. Given the foregoing I am unable to conclude that this ground is made out.
20. The final matter raised under this heading is that the Tribunal has failed to heed parliament’s injunction that only a “little weight” can be attached to a private life developed when in the UK unlawfully or when status is precarious. It is of course the case that the Respondent has never had settled status, and that he has been an overstayer for at least half of the time that he has lived in this country. As I have noted, it is clear from the Tribunal’s decision that it was well aware of that immigration history. What is less clear is whether it had in mind the legal consequences of that when it reached its decision. I cannot identify anywhere in balancing exercise where the ‘little weight’ injunction at s117B(4) is given effect. It may well be that the Tribunal had concluded that such little weight that could be afforded to the Respondent’s Article 8(1) rights - whether private or ‘quasi-family’ - were, when taken with the best interests of the children, sufficient to tip the balance in his favour, but this is not sufficiently articulated in the decision. I therefore find, on this very limited ground, that an error of law has been made out. In the circumstances I consider it appropriate to remit the matter to Judge Suffield-Thompson so that his or her proportionality assessment may be undertaken afresh with a more pronounced focus on each aspect of s117B. All the findings of fact previously made are preserved, and it is for the First-tier Tribunal to consider whether it is necessary or appropriate to hear further evidence.

Decisions

10. The decision of the First-tier Tribunal is set aside to the limited extent identified above.
11. The matter is remitted to the First-tier Tribunal, in particular to be reheard by Judge Suffield-Thompson.

12. I am not asked to make an order for anonymity and on the facts see no reason to do so.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
10th November 2023