



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12416/2016

THE IMMIGRATION ACTS

Heard at Liverpool
On December 6, 2017

Decision & Reasons Promulgated
On December 8, 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS R H K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Singh (Legal Representative)

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I extend the anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
2. The appellant is an Iraqi national. The appellant entered the United Kingdom on April 17, 2016 and claimed asylum.
3. The respondent refused his protection claim on December 12, 2016 under paragraphs 336 and 339M/339F HC 395.

4. The appellant lodged grounds of appeal on November 8, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. Her appeal came before Judge of the First-tier Tribunal GRJ Robson (hereinafter called "the Judge") on March 31, 2017 and in a decision promulgated on April 24, 2017 the Judge refused her appeal on all grounds.
5. The appellant appealed the article 8 ECHR decision on May 8, 2017. Permission to appeal was granted by Judge of the First-tier Tribunal Dineen on August 30, 2017. The respondent lodged a Rule 24 response dated September 14, 2017 in which she accepted there was an error in law because the Judge had applied the wrong test at [84] of his decision. When considering article 8 ECHR he applied an "insurmountable obstacles" test as against a "reasonableness" test.
6. The matter came before me on the above date. The appellant was in attendance with her husband and three children. Since the last hearing the appellant had given birth to their third child.
7. The appellant's representative lodged an application under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 seeking permission to adduce further evidence. This evidence included the appellant's son's birth certificate dated September 5, 2017 and a council tax bill which demonstrated her husband lived at the same address that she did.
8. Mr Harrison confirmed that the respondent accepted there had been an error in law in respect of the article 8 claim for the reasons given in the grounds of appeal and the grant of permission.
9. I asked Mr Harrison what the respondent's position was in light of the fact the appellant now had three British children and the respondent's own policy entitled "Family Life (as a partner or parent) and Private Life: 10 Year Routes."
10. This particular policy states-

"Save in cases involving criminality, the decision maker must not take a decision in relation to the parent or primary carer of a British Citizen child where the effect of that decision would be to force that British child to leave the EU, regardless of the age of that child. This reflects the European Court of Justice judgment in Zambrano."
11. The policy goes on to explain

"Where a decision to refuse the application would require a parent or primary carer to return to a country outside the EU, the case must always be assessed on the basis that it would be unreasonable to expect a British Citizen child to leave the EU with that parent or primary carer. In such cases it will usually be appropriate to grant leave to the parent or primary carer, to enable them to remain in the UK with the child, provided that there is satisfactory evidence of a genuine and subsisting parental relationship. It may, however, be appropriate to refuse to grant leave where the conduct of the parent or primary carer gives rise to considerations of such weight as to justify separation, if the child could otherwise stay with another parent or alternative primary carer in the UK or in the EU."

12. Mr Harrison accepted the appellant's children and her husband were British citizens. The young children were settled in this country and the youngest had been born here. Given their situation I am satisfied it was in the children's best interests for them to remain in the United Kingdom.
13. However, the "best interests" assessment does not automatically resolve the reasonableness question. If it did then parliament would have said as much when drafting the legislation. It therefore follows that even where the children's best interests are to remain, it may still be not unreasonable to require either the children or the appellant to leave.
14. Neither the appellant nor her husband have a criminal record and she claimed asylum on arrival in the United Kingdom. No adverse factors under section 117B of the 2002 Act were raised by Mr Harrison.
15. Mr Harrison accepted that the correct test under either Section EX.1(a) of Appendix FM of the Immigration Rules or article 8 ECHR (applying section 117B(6) of the 2002 Act) was whether it was reasonable to expect the child to leave the UK".
16. Applying the respondent's aforementioned policy and in the absence of any submissions to the contrary, I am satisfied that removal of the appellant would be unreasonable and would breach her rights under article 8 ECHR.

DECISION

17. The making of the decision of the First-tier Tribunal in respect of the article 8 assessment did involve the making of an error on a point of law. I set aside that decision and I remake that decision.
18. I allow the appellant's appeal under article 8 ECHR.

Signed

Date 06.11.2017



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT **FEE AWARD**

I make no fee award as no fee was paid.

Signed

Date 06.11.2017



Deputy Upper Tribunal Judge Alis