



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/23709/2016

THE IMMIGRATION ACTS

Heard at Field House
On 10 May 2018

Determination Promulgated
On 15 May 2018

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RINA [M]

Respondent

Representation:

For the Appellant: Mr C Avery, Home Office Presenting Officer

For the Respondent: Mr G Cutting, Authorised Representative
(Slough Immigration Aid Unit)

DETERMINATION AND REASONS

1. Permission to appeal was granted by First-tier Tribunal Judge Page to the Secretary of State on 27 March 2018 against the decision to allow of the Respondent's Article 8 ECHR appeal made by First-tier Tribunal Judge Baldwin in a decision and reasons promulgated on 22 February 2018. The Respondent is a national of Albania. She relied on her relationship to her Kosovan

husband (who has ILR) and their two young British children. Refusal had been on the basis that the Respondent had participated in the ETS fraud.

2. Judge Baldwin found that the Secretary of State had discharged the burden of proof and that the Respondent had been dishonest when claiming to have sat the language tests. Nevertheless the judge found that the best interests of one of the Respondent's British children (who suffers from an extremely serious illness) would not be served by the Respondent's removal.
3. Permission to appeal was granted on the basis that it was arguable that the judge should have found that there were no exceptional circumstances, and that the Respondent's children could remain in the United Kingdom under the care of their father.
4. Mr Avery for the Home Office relied on the grounds submitted and the grant of permission to appeal. The judge had not engaged sufficiently with section 117B of the Nationality, Immigration and Asylum Act 2002. The onwards appeal should be allowed.
5. Mr Cutting for the Respondent relied on the lengthy rule 24 notice dated 26 April 2018. Much of this was in effect a cross appeal which sought to challenge the judge's adverse credibility findings. As there had been no cross appeal served in accordance with the Upper Tribunal Procedure Rules, and also because the grounds were feeble in the extreme, the tribunal declined to hear argument on the ETS point. The remainder of the rule 24 notice rebutted the grant of permission to appeal to the Secretary of State on the basis of mere disagreement.
6. The grant of permission to appeal was in the tribunal's view very generous indeed. The judge identified the applicable legal principles: see, e.g., [19] and [20] of the decision. The judge was faced with a near impossible dilemma, which he was obliged to resolve. He examined the evidence meticulously and was fully entitled to find that the Respondent had resorted to use of a proxy for her English language tests, almost flagrantly so, as the recordings produced and identified were of a male voice. Her college was notorious for large scale fraud. The Respondent's lack of English was sadly emphasised by her need of an Albanian interpreter at the hearing. As the judge explained at [24] of his decision and reasons, the Respondent's conduct strikes at the heart of social cohesion. It is against the public interest. No doubt

that judge also had in mind that the Respondent was a clandestine illegal entrant prior to being granted leave to remain.

7. The judge found that the best interests of the Respondent's sick child were however compelling. He explained why in convincing detail, with reference to the medical evidence. It is frankly not easy to see how any judge could have reached any other conclusion, given the child's British Citizenship and tender age. The child could not be punished for her mother's sins and self evidently needed her mother's care as well as that of her father. Nor indeed should the other child have been forced to suffer inadequate care given the demands of care for her sibling. The Secretary of State's submissions amounted to disagreement but not more.
8. Hence the tribunal finds that there was no error of law and the onwards appeal must be dismissed.

DECISION

The appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged.

Signed

Dated 10 May 2018

Deputy Upper Tribunal Judge Manuell