



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/24909/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 3<sup>rd</sup> August 2018

Decision & Reasons Promulgated  
On 21<sup>st</sup> August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

THANH [L]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Alim of Counsel instructed by Direct Access  
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Vietnam whose date of birth is recorded as 28<sup>th</sup> August 1982. She appeals, with permission, the decision of the Judge of the First-tier Tribunal Oxlade who, when sitting on 19<sup>th</sup> February 2018 at Hatton Cross, heard her appeal against the decision of the Secretary of State to grant her leave to remain in the United Kingdom on human rights grounds.

2. The background to this case is that the Appellant has a child born on 2<sup>nd</sup> August 2016 who is a British citizen. Whilst in the United Kingdom and at the time of the decision she was breast-feeding the child though there was evidence that the child was to be weaned but was reluctant. There was no issue that the Appellant was living together with the father of the child in the United Kingdom and there was some evidence that the Appellant was attending to the needs of her “*mother-in-law*” though the judge was a little sceptical about that. Be that as it may consideration was given to the cases of Zambrano [2011] EUECJ C-34/09, ZH Tanzania [2011] UKSC 4, Sanade [2012] UKUT 00048(IAC) and Razgar [2004] UKHL 27. The judge was right in finding that Sanade was old law though wrongly cites the case of VM as VJ which should be VM Jamaica [2017] EWCA Civ 255. However where the judge went wrong in this case was in the understanding of Section 117B(6) of the 2002 Act.
3. That provides as follows. After stating at 117B(1) the maintenance of effective immigration control is in the public interest...
  - (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.
4. In the case of AM (Pakistan) and Others [2017] EWCA Civ 180 paragraph 20 the Court of Appeal made clear that 117B(6) was a self-contained provision in the sense that where the condition specified in the sub-section was satisfied the public interest will not justify removal.
5. It is clear from reading the decision of Judge Oxlade that if it had been appreciated that 117B(6) was as stated by the Court of Appeal the judge would have come to a different view and rightly so.
6. Mr Walker does not seek to argue against that particularly in the light of new Home Office Guidance which has come into being, as it happens after the date of the hearing at Hatton Cross but before the case was promulgated. The guidance is to the effect that caseworkers should look to the reality rather than whether there is strictly speaking a parent in the United Kingdom who could look after the child. The focus is entirely on the child.
7. It follows that the appeal is to be allowed. I should say that even if Mr Walker had sought to persuade me otherwise I would have remade the case in such manner as to have allowed the appeal with the focus on this child and having regard to *Section 55* it clearly being in the best interests of the child to be brought up by both parents and have the benefit of his UK nationality. Whether the child has Vietnamese nationality was not established in this case though that is simply an observation not material to my considerations.

**Decision**

There was a material error of law in the decision of Judge Oxlade. The decision is remade and **by consent** the appeal is allowed in the First-tier Tribunal.

No anonymity direction is made.

Signed

**Date: 13 August 2018**



**Deputy Upper Tribunal Judge Zucker**

**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 a whole fee award of £140.

Signed

**Date 13 August 2018**



**Deputy Upper Tribunal Judge Zucker**