Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/16877/2017

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 14th January 2019	**On 6th February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

F K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms L Bashow of Counsel instructed by Mohammed Anderson & Co Solicitors
For the Respondent: Mr M Diwnycz, HOPO

DECISION AND REASONS

1. This is the appellant's appeal made against the decision of Judge Drake made following a hearing at Bradford on 17th March 2018.

Background

2. The appellant is a citizen of Pakistan born on 12th May 1978. He married a British citizen in 2012. She has a son from a former relationship, born on 16th October 2005, also a British citizen. He is now 13 years old and

attending secondary school. The couple also have a second son born on 17th January 2017.

3. For over twenty years the appellant has been living in the UAE running a small and successful haulage business. He came here on 16th January 2017 on a visit visa valid to 26th October 2017 in order to attend his son's birth. Following the birth his wife was unwell and she is undergoing physiotherapy. She does not work, and the appellant now supports the family with his savings.

4. He decided that it was necessary for him to remain in the UK in order to look after his family and so, on 15th June 2017, he made an in-time application for indefinite leave to remain on the basis of his private and family life.

5. The respondent refused the application on 20th November 2017 and it was this refusal which was the subject of the appeal before the Immigration Judge.

6. The judge accepted that there was a genuine family life in this case but considered that it would be reasonable for the wife and children to go with the appellant to live either in the UAE or in Pakistan, and on that basis dismissed the appeal.

The Grounds of Application

7. The appellant sought permission to appeal on the grounds that the judge had erred in law in failing to apply Section 117B of the Nationality, Immigration and Asylum Act 2002 in her consideration of the proportionality of removal. In particular there was a complete failure to consider the position of the two British children in this case.

8. Permission to appeal was granted by Judge Shaerf on 30th May 2018.

9. Mr Diwnycz accepted that the judge had erred in law and made no further submissions on the merits, simply observing that the genuineness of the relationship had been accepted.

10. Ms Bashow relied on her grounds and argued that it would be plainly unreasonable for the appellant's stepchild to be expected to leave the UK given that he was now in secondary school, had never been either to Pakistan or to the UAE. She relied on the decision in MT and ET (child's best interests; extempore pilot) Nigeria [2018] UKUT 00088.

Findings and Conclusions

11. Mr Diwnycz accepted that the decision would have to be remade.

12. The appellant does not meet the requirements of the Immigration Rules having arrived in the UK relatively recently as a visitor and has not

demonstrated insurmountable obstacles to a return to his country of nationality.

13. In considering whether the appeal ought to be allowed on Article 8 principles outside the Immigration Rules I am required to apply paragraph 117B(6) of the 2002 Act.

14. The main issue here concerns paragraph 117B(6), but for completeness, in relation to paragraph 117B(2), the appellant speaks English, in relation to 117B(3), he is financially independent, and in relation to 117B(4), the relationship between the appellant and his wife was not formed at a time when he was in the UK unlawfully. Indeed he has never been in the UK unlawfully.

15. Paragraph 117B(6) states that in the case of a person who is not liable to deportation the public interest does not require the person's removal where the person has a genuine and subsisting parental relationship with a qualifying child and it would not be reasonable to expect the child to leave the UK.

16. In this case there are two qualifying children, the appellant's biological child who is 2 years old and, perhaps more relevantly, his stepson who is now 13 and at secondary school.

17. In MA (Pakistan) and Others v SSHD [2016] EWCA Civ 705 the Court of Appeal held that even on the approach of the Secretary of State, the fact that a child has been here for seven years must be given significant weight when carrying out the proportionality exercise. The guidance of August 2015, in the form of Immigration Directorate Instructions entitled Family Life (as a Partner or Parent) and Private Life Ten Year Routes, expressly states that once the seven years' residence requirement is satisfied there need to be strong reasons for refusing leave.

18. At paragraph 49 the Court of Appeal said

> "The fact that the child has been in the UK for seven years would need to be given significant weight in the proportionality exercise for two related reasons: first, because of its relevance to determining the nature and strength of a child's best interests; and second, because it establishes as a starting point that leave should be granted unless there are powerful reasons to the contrary."

19. Clearly the best interests are of the appellant's British stepson lie in remaining in the UK where he has lived all of his life and where he is now at a critical stage of his education.

20. The appellant has a good immigration history, having complied with the requirements of immigration control at all times. It is difficult to see what powerful reasons there could be to support the contention that it would be reasonable to expect the family to relocate either to the UAE (particularly since the appellant's work permit there has expired) or to Pakistan.

Indeed Mr Diwnycz did not seek to argue that there were any such reasons.

21. The original judge erred in law. The decision is set aside. It is remade as follows. The appellant's appeal is allowed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Deborah Taylor

Signed Date 4 February 2019

Deputy Upper Tribunal Judge Taylor