



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/18505/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 11th December 2014**

**Decision & Reasons
Promulgated
On 19th December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**LAWRENCE GEORGE POWELL
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant Secretary of State: Mr D Mills, Senior Home Office Presenting Officer

For the Respondent: Mr R Ahmed, instructed by Britannia Law Practice LLP

DECISION AND REASONS

1. Mr Powell is a citizen of Jamaica, whose appeal against refusal to grant him further leave to remain as the husband of the Sponsor, Claudette Kerr, was allowed by First-tier Tribunal Judge Bell in a determination promulgated on 28th August 2014. In the interests of clarity and continuity I will refer to Mr Powell as the Appellant, the title by which he was known before the First-tier Tribunal.

2. The judge allowed the appeal under paragraph EX.1 of Appendix FM to the Immigration Rules on the basis of the Appellant's relationship with his wife. She found that the wife would face very significant difficulties in continuing family life with the appellant in his home state which would entail very serious hardship. She also allowed it on the basis of the appellant's relationship with his son who was aged 10 and had been born in this country. In doing so she relied upon Section 117B(6) of the Nationality, Immigration and Asylum Act 2002, as amended. She found that it would not be reasonable to expect the child to leave the UK to continue family life with the appellant in his home state and she gave reasons for that view.
3. The Secretary of State sought permission to appeal. In summary the Grounds of Appeal were that the judge had treated EX.1 as a freestanding provision contrary to the guidance in the reported case of **Sabir (Appendix FM EX.1 not freestanding) [2014] UKUT 00063 (IAC)** and that she had not paid proper regard to other provisions of Section 117B of the 2002 Act. It was said that she had erred in her assessment of the difficulties that would be faced by the spouse in relocating and also as to whether it would be unreasonable to expect the child to relocate. Permission was granted on all grounds by Judge of the First-tier Tribunal Judge Vaudin d'Imecourt on 6th October 2014.
4. My provisional view, prior to the hearing, was that the judge had erred in considering that paragraph EX.1 could not apply to the child, as he had only discretionary leave, but that could have no material bearing on the outcome. In other respects the decision appeared to be adequately reasoned and sustainable.
5. At the commencement of the hearing Mr Mills, who had clearly given the matter a great deal of thought, said that the whilst there might be some merit in the appeal on the basis of reasoning, he did not think that he could maintain the challenge generally. The child did appear to come within the provisions of EX.1 and also Section 117B of the 2002 Act, as amended. EX.1 was applicable and the guidance in **Sabir** on this occasion did not take the provision out of the equation. He added that he had recently ascertained that the child had now been registered as a British citizen, having lived in this country for over ten years. He accepted that the challenge could not be maintained.
6. I was grateful to Mr Mills for his practical approach with which I wholly agreed. Whilst some might regard the judge's view of the difficulties potentially faced by the spouse in travelling to the home country as being generous, the reasons she gave were in my view sustainable and the decision she reached open to her on the evidence. In addition EX.1 did in my view apply to the child. The judge's approach to paragraph 117B in respect of the child was I felt unassailable. There was therefore no material error in the determination.

7. No anonymity order was sought and I could see no reason why one might be required.

Decision

The making of the original decision did not involve the making of an error on a point of law. The decision that the appeal be allowed therefore stands.

No anonymity order is made.

Signed

Date 19th December 2014

Deputy Upper Tribunal Judge French