



IAC-AH-CJ-V1

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

Appeal Number: IA/05720/2015

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Decision & Reasons Promulgated
Birmingham
On 7th December 2015**

On 21st December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**JCL
(ANONYMITY ORDER MADE)**

Respondent

Representation:

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

For the Respondent: Mrs H Masih of Counsel, instructed by Braitch RB Solicitors

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a decision of Judge Pooler of the First-tier Tribunal (the FtT) promulgated on 3rd June 2015.
2. The Respondent before the Upper Tribunal was the Appellant before the FtT and I will refer to him as the Claimant.

3. The Claimant is a male national of Trinidad and Tobago born in 1985. He applied for leave to remain in the United Kingdom on the basis of his family and private life.
4. The application was refused on 23rd January 2015, having been considered under Appendix FM and paragraph 276ADE(1) of the Immigration Rules.
5. The appeal was heard on 28th May 2015. The FtT allowed the appeal with reference to Article 8 outside the Immigration Rules. The FtT noted that the Appellant's wife and two children are British. The FtT considered section 117B of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) and found that section 117B(6) applied and meant that because the Claimant has a genuine and subsisting parental relationship with two British children, and it would not be reasonable to expect the children to leave the UK, the appeal should be allowed.
6. The Secretary of State applied for permission to appeal to the Upper Tribunal. In summary it was contended that the FtT had materially erred in law by considering section 117B(6) as the determining feature of the case, and the Article 8 analysis had been inadequately reasoned.
7. It was contended that the FtT had considered that because the children could not reasonably go to Trinidad with the Appellant, then the appeal should be allowed, and this misapplied section 117B.
8. The FtT had failed to consider the wider assessment, including the very strong public interest. The Appellant had entered on a visit visa, and knew that he could not switch, and therefore knew that there was a possibility that he may have to return to Trinidad to make the appropriate application. The public interest was greater, because the Appellant was in the UK unlawfully when he and his partner first met in 2009.
9. The FtT had given no consideration to the fact that the Appellant was expressly precluded from varying an application when in the United Kingdom as a visitor. Therefore the FtT had failed to give adequate reasons for finding that the public interest in maintaining effective immigration control was outweighed.
10. Permission to appeal was granted by Judge of the First-tier Tribunal Pedro, who found the grounds arguable.
11. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT had erred in law such that the decision should be set aside.

Oral Submissions

12. Mr Mills stated that he agreed with the response submitted on behalf of the Respondent pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 which had been lodged on the morning of the

hearing, and which contended that the decision of the FtT disclosed no error of law.

13. Mr Mills confirmed that he disagreed with the application made by the Secretary of State, and accepted that the decision of the FtT disclosed no error of law. Mr Mills explained that he accepted that section 117B(6) was determinative, and confirmed that the public interest did not require a person's removal, if that person had a genuine and subsisting parental relationship with a qualifying child, and it would not be reasonable to expect the child to leave the United Kingdom.
14. Mr Mills invited me to dismiss the Secretary of State's application on the basis that the decision of the FtT should stand.
15. Mrs Masih agreed, and indicated that if necessary she could make submissions relying upon the rule 24 response. I indicated that that would not be necessary.

My Conclusions and Reasons

16. In my view Mr Mills was correct to concede that the application made by the Secretary of State should be dismissed, and that the decision of the FtT discloses no error of law.
17. The FtT adopted an appropriate and correct approach when considering this appeal, and took into account all relevant matters, and did not attach weight to immaterial considerations.
18. The FtT at paragraph 31 acknowledged the importance of immigration control, and recorded that the Claimant did not meet the requirements of the Immigration Rules.
19. At paragraph 33 the FtT recorded that the relationship between the Claimant and his partner developed at a time when the Claimant was in the UK unlawfully because he had entered as a visitor in January 2009 and overstayed.
20. At paragraph 38 the FtT again recorded the public interest in maintaining immigration control, and concluded;

"I have kept in mind the Appellant's relatively poor immigration history, demonstrated by his period of overstaying, but I do not consider that this can outweigh the best interests of the children."
21. The FtT has demonstrated that it considered all the factors in section 117B, and no error of law is disclosed in the consideration of section 117B(6) which is set out below;
 - (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.

22. The FtT found that the Appellant did have a genuine and subsisting parental relationship with his two British children, and gave adequate reasons for finding that it would not be reasonable to expect those children to leave the United Kingdom. The FtT then observed that because the Appellant was not liable to deportation, statute dictated that the public interest did not require his removal.

23. The findings and conclusions made by the FtT were open to it on the evidence, and are supported by adequate and sustainable reasons.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision must be set aside. I do not set aside the decision. The appeal of the Secretary of State is dismissed.

Anonymity

The First-tier Tribunal made an anonymity direction to protect the interests of the Claimant's children. I continue that anonymity order pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 9th December 2015

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

Because the decision of the First-tier Tribunal stands, so does the decision to make a full fee award.

Signed

Date 9th December 2015

Deputy Upper Tribunal Judge M A Hall