Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/23613/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons**
On 5 June 2015	**Promulgated On 10 July 2015**

Before

UPPER TRIBUNAL JUDGE PINKERTON
DEPUTY JUDGE OF THE UPPER TRIBUNAL KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SAAD MIRZA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr Jafar, counsel instructed by Lee Valley Solicitors
For the Respondent: Mr Tarlow, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The Secretary of State appeals a decision promulgated on 23 February 2015 of First-tier Tribunal Judge Swaniker who allowed an appeal, on human rights grounds, against a decision to refuse the appellant leave to remain as the dependant of a Tier 4 migrant.

2. Permission to appeal was granted on 17 April 2015.

3. Although the Secretary of State was the appellant before us we will, for ease of reference, refer to her as the respondent as she was the

respondent in the First-tier. Similarly, we will refer to Mr Saad Mirza as the appellant as he was the appellant in the First-tier.

Background

4. The appellant was last granted leave to remain in the United Kingdom as a Tier 4 migrant, until 27 April 2014. He made an in-time application for further leave to remain as the dependant of his partner, Ms Aqeela Parveen who had leave to remain until 19 January 2016 as a a Tier 4 migrant. Their child, Sanaya born on 18 November 2013, was granted leave in line with her mother on 20 May 2014. The appellant's application was refused on 19 May 2014 with reference to paragraph 319C(i) of the Rules because his partner was not studying in one of the specified ways and the appellant had not applied for further leave to remain at the same time as her.

5. During the course of the hearing before the First-tier Tribunal which took place on 3 February 2015, it was accepted by both parties that the appellant could not meet the requirements of the Rules relating to student dependants, Appendix FM or paragraph 276ADE.

6. Judge Swaniker found as follows:

   a. That the respondent's decision was not in accordance with the law owing to the failure to have any regard to the consideration of Article 8.

   b. That the respondent had granted the sponsor further leave to remain as a student one day after the refusal of the appellant's application.

   c. That the sponsor would be unable to continue her studies without the presence of the appellant in order to look after their young child.

   d. Following Chikwamba, it was not reasonable to expect the sponsor to return to Pakistan solely for the purpose of obtaining entry clearance.

   e. It was not reasonable to expect the family unit to return to Pakistan in order to continue family life there when the sponsor had been granted leave to remain to continue her studies in the United Kingdom.

Error of law

7. The grounds of appeal submit:

   1. The judge made a material error of fact in finding that the sponsor had leave to remain as a student at the time of the hearing. Home Office records showed that the sponsor's leave to remain was curtailed on 10 December 2014, to expire on 11 February 2015.

2. The judge paid no regard to the public interest considerations in section 117B of the Immigration, Nationality and Asylum Act 2002 in allowing the appeal on human rights grounds.

8. Permission was granted in relation to the first ground alone.

9. At the hearing before us, Mr Tarlow handed up two letters addressed to the sponsor, both dated 10 December 2014. One of these letters purported to curtail her leave, such leave to expire on 11 February 2015 and the second referred to the revocation of the sponsor licence of London St. Andrew's College. At this juncture, we observe that the hearing of the appeal took place on 3 February 2015 when, by all accounts, the sponsor still had leave to remain.

10. Mr Tarlow was unable to advise us whether the above-mentioned letters were provided to the FTTJ, owing to there being no file note from the presenting officer on the day. Mr Jafar, who was present at the hearing before the FTTJ, confirmed that the said documents were not before the FTTJ and that the issue of curtailment was not alluded to. We also noted that the FTTJ's record of proceedings made no mention of them. Mr Tarlow recognised that he was in a difficult position and said no more regarding this ground.

11. In relation to ground 1, we are unable to find that the curtailment evidence was before the FTTJ. In addition, there was no evidence before us to show that the respondent ever sent these documents to the sponsor. We conclude that the FTTJ made no error of fact in finding that the sponsor had leave to remain as a student as at the date of the hearing.

12. With regard to ground 2, Mr Tarlow was of the view that only section 117B(1) was relevant. He conceded that it was not the respondent's strongest point and was unlikely to amount to a material error of law. We agreed. We were of the view that paragraph 15 of the FTTJ's decision illustrates that she had in mind the public interest considerations even if she did not explicitly say so. Included in that paragraph are clear references to the appellant's immigration history and conduct during his time in the United Kingdom as well as to the law and Immigration Rules. Furthermore, the judge referred to an analogous case, that of R (oao Zhang v SSHD [2013] EWHC 891 (Admin), where the Court concluded that proportionality, in relation to a similar paragraph 319C refusal decision, will be achieved only in circumstances where applicants entertain a poor immigration record or there is only a tenuous engagement of Article 8. Neither is the case here. We therefore concluded that the judge's error in not stating that she had regard to section 117B was not material and had she done so it would have made no difference to the outcome of the appeal.

13. In these circumstances we are satisfied that there are no errors of

law such that the decision be set aside. We uphold the decision of the FTTJ.

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision of the FTTJ is upheld.

No application for anonymity was made and we could see no reason to make such a direction.

Signed Date: 7 June 2015

Deputy Upper Tribunal Judge Kamara