



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

Appeal Number: HU/02196/2016

THE IMMIGRATION ACTS

**Heard at City Centre Tower, Decision & Reasons
Birmingham Promulgated
On 14th July 2017 On 3rd August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**MUHAMMAD ADEEL AHMAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Ahmed, Counsel instructed by City Law Practice Solicitors

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Pakistan born on 3rd January 1988. The Appellant first arrived in the UK on 17th July 2010 when he was given leave to enter as a Tier 4 (Student) Migrant until 6th November 2012

subsequently extended until 10th October 2015. On 9th October 2015 the Appellant applied for leave to remain as a family member. That application was refused on 12th January 2016 for the reasons given in the Respondent's letter of that date. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Nixon (the Judge) sitting at Birmingham on 3rd November 2016. She decided to dismiss the appeal on human rights grounds for the reasons given in her Decision dated 13th November 2016. The Appellant sought leave to appeal that decision, and on 19th April 2017 such permission was granted but only on the first and third grounds set out in the grounds of application.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge dismissed the appeal because although she found that the Appellant had a family life with his wife and child resident in the UK, she also found that the decision of the Respondent would not amount to a breach of the Appellant's Article 8 ECHR rights within the Immigration Rules. That decision has not been challenged in this appeal. The Judge also found that the Respondent's decision did not amount to a disproportionate breach of the Appellant's Article 8 ECHR rights outside the Immigration Rules as it was proportionate.
4. At the hearing, Mr Ahmed submitted that the Judge had materially erred in law in coming to the latter conclusion. She had failed to give any or sufficient weight to the best interests of the Appellant's child born on 30th July 2015. That child was a British citizen, and it was not reasonable to expect her to leave the UK to live with her parents in Pakistan. The Judge had failed to give sufficient analysis to this aspect of the case. The Judge had erred in her consideration of the factors set out at Section 117B of the Nationality, Immigration and Asylum Act 2002.
5. In response, Mrs Aboni argued that there was no such material error of law. She referred to her Rule 24 response and said that the grounds of application amounted to no more than a disagreement with the decision of the Judge. The Judge had made clear findings of fact which were open to her on the evidence before her and had carried out the necessary balancing exercise.
6. I find no material error of law in the decision of the Judge. The challenge is to the Judge's assessment of proportionality. The Judge carried out that assessment in accordance with the guidance provided in **R (Razgar) v SSHD [2004] UKHL 27** and I agree with the submission of Mrs Aboni that the Judge came to a conclusion which was open to her on the evidence before her. The Judge took into account all the relevant evidence and demonstrated that she had carried out the necessary balancing exercise. It is not right that the Judge failed to treat the best interests of the Appellant's child as a primary consideration. The Judge took those best

interests as a starting point but in accordance with the decision in **ZH (Tanzania) [2011] UKSC 4**, did not treat those best interests as the sole determinative factor. The Judge found that it would be reasonable for the Appellant's wife and child to relocate with him to Pakistan. The Judge gave due weight to the public interest as required by Section 117B of the 2002 Act, and she comprehensively explained why that interest outweighed the personal circumstances attributable to the Appellant. For these reasons I find no material error of law in the decision of the Judge.

Decision

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

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed

Dated 3rd August 2017

Deputy Upper Tribunal Judge Renton