



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

Appeal Number: IA165482015

THE IMMIGRATION ACTS

**Heard at Field House
On 30 May 2017**

**Decision & Reasons
Promulgated
On 2 June 2017**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**M N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr P Singh, Home Office Presenting Officer

DECISION AND REASONS

1. This is a resumed hearing of the appeal brought by the appellant against a decision made by the respondent on 13 April 2015 refusing her ILR as the spouse of a person present and settled in the UK. The appellant's appeal originally came before First-tier Tribunal Judge (FtT) Broe who dismissed it

on 27 June 2016. Subsequently, however, I set aside the FtT judge's decision for material error of law and set it down for a resumed hearing. I observed that there was no dispute as to the facts up to the time of the hearing on 10 June, but that the respondent would need to consider three important developments since that date:

- that the oldest child became a British citizen on 18 November 2016;
- that her husband sponsor became a British citizen on 30 August 2016;
- that the appellant was pregnant with a third child.

2. I directed that the respondent be given an opportunity to reconsider the case before I listed it for hearing, but when nothing was forthcoming the case was listed. Mr Singh informed me that an e-mail had been sent to the Upper Tribunal apologising for the failure to respond and indicating that the respondent wished to withdraw her defence of this case, as she was intending to make a grant of leave. I pointed out that it was the appellant's appeal and that Rule 17 of the Procedure Rules (Upper Tribunal) 2008 did not address withdrawal of a decision, only withdrawal of an appeal. I stated that in such circumstances, in which there has not as yet been any formal withdrawal of the respondent's decision and no fresh decision, I would proceed to determine the grounds of appeal.

3. I heard very briefly from Mr Singh and the appellant in person.

4. Given the respondent's indication that she no longer wished to resist the appellant's appeal it is unnecessary for me to set out my reasons in any detail. In brief I have decided to allow the appellant's appeal on Article 8 grounds. Applying the same approach adopted by the Upper Tribunal in **SF and others (Guidance, post-2014 Act)** [2017] UKUT 120(IAC), I consider that:

1. The oldest child is now a British citizen and cannot be removed.
2. The appellant's circumstances now come within the scope of Section 117B(6) NIAA 2002 since she has a genuine and subsisting relationship with a British citizen child.
3. It is the policy of the Secretary of State that it is not reasonable to expect a British citizen child to leave the UK.
4. It is clear on the facts of this case that if the appellant were required to leave the UK, her British citizen child would be compelled to leave the territory of the European Union.
5. There are no criminal or other public policy considerations capable of making it reasonable to expect the appellant's child to leave the UK.

6. The appellant is entitled to succeed on the basis that she meets the requirements of Section 117B(6).

Notice of Decision

5. For the above reasons:

- The decision of the First-tier Tribunal has already been set aside for material error.
- The decision I re-make is to allow the appellant's appeal on Article 8 grounds.

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 her or any member of her 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.

Signed

Date: 1 June 2017



Dr H H Storey
Judge of the Upper Tribunal