Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/27270/2013**

THE IMMIGRATION ACTS

Heard at	**Decision & Reasons Promulgated**
City Centre Tower, Birmingham	
On 18th September 2017	**On 16th October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

MUHAMMAD ASAD KHALIL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe, Counsel, instructed by Law & Justice Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Pakistan born on 25th November 1985. He first arrived in the United Kingdom on 27th January 2011 when he was granted leave to enter until 14th April 2013 as a spouse. On 13th March 2013 he applied for indefinite leave to remain as the victim of domestic violence. That application was refused for the reasons given in the Respondent's Refusal Letter dated 13th June 2013. The Appellant appealed, and his appeal was heard by First-tier Tribunal Judge Chohan

(the Judge) sitting at Birmingham on 23rd November 2015. The Judge decided to dismiss the appeal under the Immigration Rules and on human rights grounds for the reasons given in his Decision dated 10th December 2015. The Appellant sought leave to appeal that decision, and eventually such permission was granted on 17th July 2017 following an order of the High Court.

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 decision of the Judge to dismiss the appeal under the Immigration Rules is not in issue in this appeal. The Judge decided to dismiss the appeal on human rights grounds because although he found the Appellant had a family life with his daughter, Memoona Shazedi born on 10th August 2012, and that the decision of the Respondent amounted to an interference with such family life of sufficient gravity to engage the Appellant's Article 8 ECHR rights, such interference was proportionate even taking into account the best interests of that child. In reaching that conclusion, the Judge considered the provisions of paragraph 117B(6) of the Nationality, Immigration and Asylum Act 2002 and found the Appellant's child to be a qualifying child. However, he decided that there were no compelling circumstances justifying a grant of leave to remain as the Appellant did not live with his daughter and had been granted only indirect contact with her by the Family Court.

4. At the hearing, Mr Pipe referred to Ground 2 of the application for Judicial Review and the Order of the High Court and argued that the Judge had erred in law in his decision relating to the provisions of Section 117B(6) of the 2002 Act. At paragraphs 22 and 24 of the Decision the Judge found family life between the Appellant and his daughter, and that such family life would be interfered with by the refusal of the Appellant's application for indefinite leave to remain. In his decision, the Judge had failed to make a finding in respect of Section 117B(6)(a) as to whether the Appellant had a genuine and subsisting parental relationship with his daughter, a qualifying child. Section 117B(6) was a "stand alone" provision and therefore provided a complete answer to the question of proportionality. The Judge had therefore erred in law materially by failing to decide all issues raised by the Section.

5. In response, Mr Mills argued that the decision of the Judge could only be rationally read to imply that the Judge found the provisions of Section 117B(6)(a) not to be met. The contents of paragraphs 22 and 28 of the Decision indicated that the Judge found the relationship between the Appellant and his daughter to be something less than genuine and subsisting.

6. I do find a material error of law in the decision of the Judge which I therefore set aside. It is not in dispute that the Judge did not make a specific finding as to whether there was a genuine and subsisting parental

relationship between the Appellant and his daughter, a qualifying child, as required by Section 117B(6)(a) of the 2002 Act. It is true that the Judge referred extensively to the decision of the Family Court to allow the Appellant only indirect contact with his daughter, implying something less than a genuine and subsisting parental relationship, but elsewhere in the Decision the Judge found family life between the Appellant and his daughter which would be interfered with to a degree of gravity sufficient to engage the Appellant's Article 8 ECHR rights, implying some sort of genuine and subsisting parental relationship. These decisions are contradictory and therefore amount to a material error of law. The error is material as a flawless decision in respect of Section 117B(6) can be determinative of the appeal.

7. I did not proceed to remake the decision in the appeal but to remit the appeal to the First-tier Tribunal for the decision to be remade there in accordance with paragraph 7.2(b) of the Practice Statements as fact-finding is still necessary.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision in the appeal will be re-made in the First-tier Tribunal.

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 Date 13th October 2017

Deputy Upper Tribunal Judge Renton