



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/28371/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 31 July 2017

Promulgated

On 21 September 2017

Before

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

Between

**MR H S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma of Counsel instructed by HSBS Law Solicitors
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a citizen of India has permission to challenge the decision of First-tier Tribunal (FtT) Judge Hussain sent on 10 November 2016 dismissing his appeal against the decision of the respondent made on 30 July 2015 refusing leave to remain.
2. The appellant's principal ground of appeal was that the judge erred in his assessment of s.117B(6) of the NIAA 2002 in that he was wrong to find that it had no application for the reason that "he is not [the child H's] biological father or has any parental relationship with him" (paragraph 22(e)). Mr Duffy, on behalf of the respondent, conceded that the judge's reasoning was contrary to the decided authority, namely **R (on the**

application of RK) v SSHD (s.117B(6): “parental relationship” IJR [2016] UKUT 00031 (IAC). M Duffy also accepted this error was a material one.

3. I concur with Mr Duffy in considering that the appellant’s grounds are made out. The judge’s treatment of the issue of parental relationship was vitiated by legal error necessitating that I set aside his decision.
4. Mr Sharma initially submitted that the case should be retained in the Upper Tribunal and the decision re-made without further ado as s.117B(6) clearly applied to the appellant’s case and, by virtue of the child H being a British citizen, it was inevitable following **SF and others (Guidance post-2014 Act [2017] UKUT 120 (IAC)R** that the appellant would succeed in his Article 8 grounds of appeal because on the respondent’s own policy it would not be reasonable to expect the child to leave the UK or the parent of such a child.
5. However, following further discussion, Mr Sharma agreed that there was an area of factual dispute that required careful examination in the light of full evidence about the child H’s circumstances, including in particular, as regards the extent of the continuing involvement in the life of H of his biological father. Whether or not the appellant could qualify under s.117B(6) was dependent on the outcome of that fuller examination.
6. Accordingly I have decided to remit the case to be dealt with de novo by the FtT, not before Judge Hussain.
7. Any further evidence which the parties wish to advance must be submitted 14 days in advance of the date to be fixed for hearing.
8. For the above reasons:

The decision of the FtT judge is set aside for material error of law.

The case is remitted to the FtT.

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 him or any member of their 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



Dr H H Storey
Judge of the Upper Tribunal

21 September 2017

