



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: IA/33606/2015

THE IMMIGRATION ACTS

Heard at: Field House  
On 3 May 2017

Decision and Reasons Promulgated  
On 17 May 2017

Before

Deputy Upper Tribunal Judge Mailer

Between

MR HARPINDER SINGH DHILLON  
NO ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr A Burrett, counsel (instructed by Malik Law Chambers)

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

DECISION AND REASONS

1. The appellant is a national of India, born on 5 August 1974. He appeals with permission against the decision of the the first-tier Tribunal promulgated on 28 September 2016 dismissing his appeal against the decision of the respondent refusing his application for leave to remain in the UK. The appellant entered the UK on 13 November 2009 as a Tier 4 student. Following a subsequent grant of leave to remain until 28 February 2015, leave was curtailed on 21 September 2014.

2. His application made on 25 February 2015 for leave to remain on the basis of his private life was refused on 16 October 2015. That was the decision appealed against [10]. The Judge found that the appellant could not satisfy the relevant provisions under the Immigration Rules.
3. In considering the appeal pursuant to Article 8 outside the Rules the Judge found that the public interest outweighed the appellant's private life and that there were no exceptional circumstances. The decision to remove was proportionate.
4. On 21 February 2017 Upper Tribunal Judge Gill granted the appellant permission to appeal. She stated that it is arguable that the Judge erred by failing to consider whether in relation to the Article 8 claim it would be reasonable to expect the appellant's two year old British citizen child to leave to the UK in order to enjoy family life with both of his parents.
5. It was also arguable that the Judge failed to apply R (MA) Pakistan v SSHD [2016] EWCA Civ 705: the fact that a child is a qualifying child by reason of continuous residence for at least seven years must be given significant weight in the balancing exercise. By analogy that reasoning arguably also applied where a child is a qualifying child by reason of British citizenship.
6. In the Rule 24 response the respondent did not oppose the appeal and invited the Tribunal to determine the appeal afresh. It was noted that the Judge appeared not to have considered whether it would be reasonable to expect the appellant's child, who is a qualifying child, to leave the UK.

### **The appeal**

7. At the commencement of the hearing, Mr Singh confirmed that there had been an error of law for the reasons given. In the circumstances, the parties requested that the decision should be set aside and remitted to the First-tier Tribunal for a fresh decision to be made under Article 8.
8. I accede to that request. I have considered the President's Practice Statement regarding the remitting of an appeal to the First-tier Tribunal for a fresh decision. I am satisfied that the extent of judicial fact finding which is necessary for the decision to be re-made is likely to be extensive.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law and the decision is set aside.

I remit the appeal to the First-tier Tribunal, Newport, for a fresh decision to be made before another Judge.

No anonymity direction is made.

Signed

Date 16 May 2017

Deputy Upper Tribunal Judge C R Mailer