



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

Appeal Number: PA/07163/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 21 November 2017**

**Decision & Reasons
Promulgated
On 6 December 2017**

Before

**MR JUSTICE JULIAN KNOWLES
UPPER TRIBUNAL JUDGE CANAVAN**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S A

(ANONYMITY DIRECTION MADE)

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves child welfare issues. We find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the respondent (the appellant in the First-tier Tribunal appeal) is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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.

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr A Toal, Counsel instructed by Wilson Solicitors LLP

DECISION AND REASONS

1. For the sake of continuity, we will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal to the Upper Tribunal.
2. The appellant appealed against the respondent's decision dated 30 June 2016 to refuse a human rights claim in the context of deportation proceedings. First-tier Tribunal Judge Davey allowed the appeal in a decision promulgated on 03 October 2017. He was satisfied that the particular care provided by the appellant to his severely autistic child amounted to 'very compelling circumstances' that outweighed the significant public interest in deportation.
3. We find that the grounds do not disclose any errors of law in the First-tier Tribunal decision.
4. The grounds essentially raise two points. The first ground was that the First-tier Tribunal failed to address the issue of alternative care. First, it is not clear that that point was even argued by the Presenting Officer at the hearing although it is of course reasonable to infer that social services have a duty to assist families with children with special needs if the family is unable to provide adequate care. Second, we are satisfied that the judge made sufficient findings at paragraph 42 to explain why it was that the particular relationship the appellant has with the child was so important. In such circumstances, it was the separation of the child from his father that formed part of the very compelling circumstances the judge was considering. We do not consider that it was an error of law for the judge not to go on to consider whether social services care would be adequate when, on his own findings, it would clearly not be adequate.
5. The second point asserted that the judge failed to give clear reasons as to why other family members could not assist with the care of the child. Again, we consider that the judge gave more than adequate reasons to explain why he concluded that other family members were unable to assist in paragraph 21. The judge heard evidence and could assess the difficulties that those family members might have. He noted in that their evidence was not challenged in cross-examination. In such circumstances, it was open to the judge to conclude that the other family members in the UK were unable to provide adequate care to a child with such special needs.

6. Mr Tufan raised other points in his submissions, which were not included in the grounds of appeal. We find that there is nothing in those points. Whether the judge referred to the test as 'very exceptional circumstances' or 'very compelling circumstances' is immaterial. Even if the judge referred inaccurately to a test of 'very exceptional circumstances' it is arguably a higher test. The judge was nevertheless satisfied that there were such compelling circumstances in this case.
7. Mr Tufan also argued that the judge made unclear findings as to whether the children were British. Again, we conclude that the point is immaterial. Whether or not the children were 'qualifying children' at the date of the deportation decision it was open to the judge to consider whether there were very compelling compassionate circumstances that outweighed the weight to be given to the public interest in deportation regardless of the nationality of the appellant's children or their length of residence.
8. For these reasons, we conclude that the First-tier Tribunal did not involve the making of an error of law.

DECISION

The First-tier Tribunal decision did not involve the making of an error of law

The First-tier Tribunal decision shall stand

Signed 

Date 05 December 2017

Upper Tribunal Judge Canavan