



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03928/2017

THE IMMIGRATION ACTS

Heard at Field House
On 23 July 2018
Prepared 23 July 2018

Decision & Reasons Promulgated
On 11 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ZONAIID [A]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Presenting Officer

For the Respondent: Mr M K Mustafa, Solicitor of Kalam Solicitors

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.
2. The Claimant, a national of Bangladesh, date of birth 1 January 1984, appealed against the Secretary of State's decision [D] taken on 17 February 2017 to refuse an application

for leave to remain based around his family life in the UK. His appeal against that decision came before First-tier Tribunal Judge Pooler (the Judge), who, on 14 May 2018, allowed the appeal on Article 8 ECHR grounds. The Secretary of State applied for permission to appeal which was granted by First-tier Tribunal Judge Grimmett on 1 June 2018. The Judge in granting permission said this:

“The respondent (Secretary of State) says the Judge erred in allowing the appeal on the grounds that the appellant (Claimant) has a British citizen child without giving adequate weight to the deception practised by the appellant. The point is arguable.”

3. The reference to the deception by the Secretary of State clearly related to an ETS English language test certificate obtained using a proxy test taker. The Claimant’s immigration history such as it can be accurately determined was that the Claimant had by and large been in the United Kingdom lawfully as a student but there had been a period from or about July 2016 when he had no right to remain and no appeal rights were being exercised. The Judge in looking at the matter followed a somewhat unsatisfactory process once he had determined the issue against the Claimant in respect of his claims. Of particular note is that the Secretary of State was represented and it was accepted, seemingly, [D17], that the Claimant enjoyed a family life in the UK with his wife and daughter (approximately 18 months old) and accepted that his removal would give rise to an interference in respect for family life rights.
4. The Judge, contrary to the case law, did not proceed to consider as a separate issue, as a starting point, the best interests of the child, the Claimant’s daughter, but eventually, once engaged in the issue raised by Section 117B(6) of the NIAA 2002, as amended, mixed together the considerations of the best interests which he found lay in the child remaining in the UK which it seems perhaps surprisingly, the Presenting Officer did not argue to the contrary and effectively argued as the Secretary of State typically does that a young child can remove with the parents back to the relevant home country. However it was accepted the best interests of the child lay in remaining in the UK.

5. The Judge then went on to consider public interest issues and for understandable reasons although somewhat surprisingly, took the view that the Claimant's immigration history and his use of deception over the proxy test taking was not such a weighty factor as to "outweigh the child's best interests". It is fair to say that that was not exactly the issue. The Judge went on to say, "it is not a strong enough reason for expecting a British child to leave the UK". At paragraph 27 he went on to say, "I find on balance that it would not be reasonable to expect the child to leave the UK and that the Appellant must therefore succeed in his appeal on Article 8 grounds".

6. I would for my part conclude that there is a significant lack of organised reasoning in that conclusion but the question I ask is, if there is an error of law which on the face of it the Judge has really not got to grips with and address the cases of MA (Pakistan) [2016] EWCA Civ 705 or AM (Pakistan) [2017] EWCA Civ 180 or the case of Zoumbas [2013] UKSC 74, let alone any analysis. It seemed to me that the Judge failed to properly deal with it in the manner expected and if he, as it seems, concluded that it was not reasonable for the child to leave the UK in light of the Court of Appeal case law, really that was the end of the issue as to whether or not it can be proportionate to do so to maintain the decision that was made.

7. I conclude that the Judge's reasoning is poorly set out and arguably the reasoning as set out is confused or confusing. However, it seemed to me that a different Tribunal on the same evidence, if they properly set out the reasoning, would be likely to have reached the same conclusion, namely that it is not reasonable for the British national child, a qualifying child, to be required to leave the UK or separated from his parent with whom it seems to be accepted there was a genuine and subsisting parental relationship. In the circumstances of the case therefore, whilst I certainly would not have written this decision in the way it was and regret that such confusion of presentation should have existed, I nevertheless think that the Original Tribunal's decision stands.

NOTICE OF DECISION

8. The appeal of the Secretary of State is dismissed. The Original Tribunal's decision stands.

9. No anonymity direction is made.

Signed

Date 20 August 2018

Deputy Upper Tribunal Judge Davey