



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/16138/2016

THE IMMIGRATION ACTS

Heard at FIELD HOUSE  
On 11<sup>th</sup> July 2018

Decision & Reasons Promulgated  
On 19<sup>th</sup> July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

MRS NISHAT SHAKEEL SHABIR  
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Gherman (Counsel)

For the Respondent: Mr L Tarlow (Home Office Presenting Officer)

ERROR OF LAW DECISION AND REASONS

1. This is an error of law hearing. The appellant appeals against the decision of the First-tier Tribunal (Judge Hussain) ("FtT") promulgated on 22.12.2017 in which the appellant's appeal on human rights grounds was dismissed.

Background

2. The appellant is a citizen of Pakistan. She entered the UK in July 2013 with a spousal visa and was granted leave until April 2016. The appellant and her husband were married and had a child born on 4.3.2016. The couple were trying to have another child and produced evidence of this at the hearing. Her application for further leave under the 5 year route was refused on the grounds that they failed to show a genuine and subsisting relationship and did not meet the financial requirements.

### **FtT decision**

3. The FtT found that the appellant and her husband were not in a genuine and subsisting relationship [21] based on evidence of their residential addresses and the FtT's supposition that they lived with the sponsor's parents. The FtT found that there was no evidence to show that the appellant's child was a child of her husband because there was no DNA evidence [27]. The FtT concluded that the appellant failed to meet the financial requirements of the Immigration Rules as there was insufficient evidence. In considering Article 8 the FtT referred to the appellant as the mother of a British citizen child, but found that it was not unreasonable for the child given her young age to move to Pakistan and / or that her best interests lay with her remaining with her mother [33]. The FtT took the view that there was an absence of evidence of any contact or relationship with the child's father.

### **Grounds for permission to appeal (see grounds)**

4. In detailed grounds of appeal the appellant argued that the FtT erred by
  - a) failing to place weight on relevant evidence to show the relationship was genuine and subsisting.
  - b) failing to take into account documentary and other evidence as to the residential address of the couple
  - c) failing to properly consider financial evidence
  - d) failing to apply the Immigration Rules and jurisprudence in relation to the removal of a British citizen child outside of the EU. The FtT failed to apply Ex 1 and did not adequately consider the best interests of a British child (**ZH** (Tanzania) [2011] UKSC 4 and/or the respondent's own Guidance on the application of EX1.

### **Permission to appeal**

5. Permission to appeal to the Upper Tribunal (UT) was granted and limited to the fourth ground only regarding the failure to consider section 55 and Ex 1.

### **Submissions**

6. At the hearing before me Ms Gherman applied for leave to renew the application for permission to appeal on all grounds which I granted.
7. Ms Gherman relied on the grounds of appeal in full and expanded on the same. Her detailed submissions are set out in the record of proceedings and have been taken in to account by me.
8. In response Mr Tarlow resisted the application for leave and submitted that it amounted to an attempt to re litigate the issues under appeal. The respondent opposed the appeal.

### **Discussion and conclusion**

9. I granted leave and permission to proceed on all grounds. I decided that the appeal was made out on all grounds and set aside the FtT decision. It was entirely clear that the

FtT placed little weight on or disregarded what amounted to a large body of evidence to show that the couple were in a genuine and subsisting relationship. I am satisfied that the decision made was against the weight of the evidence adduced in this appeal. The FtT heard oral evidence from the parties and from the appellant's father in law, making no reference to the latter. In addition there was evidence of the appellant's entry to the UK as a spouse, written evidence from a neighbour that the couple were genuine and living at the address given, documentary evidence (pre and post dating the application) showing both names, evidence from the management agency for [..... Road}, and evidence to show that another property was rented out by the sponsor. The FtT engaged in an exploration of immaterial matters and speculation rather than looking at and making clear findings on the evidence adduced. Indeed the FtT speculated that the couple were living with their in laws yet still maintained the finding that they were not in a genuine relationship [26]. The FtT was openly critical of the failure of the couple (whom it was stated had the finances available) to obtain DNA evidence where there was no statutory requirement to do so [27]. The FtT gave no consideration to the fact that the child was entitled to British citizenship because her father, the sponsor, was a British citizen. The FtT failed to give proper or adequate reasons for finding that the relationship was not genuine and subsisting.

10. In terms of the financial evidence the FtT dismissed that evidence and failed to carry out its duty to decide the case on the evidence before it. The FtT stated that "it seems unnecessary for me to consider the finer points of the evidence regarding the sponsor's rental income [29]." In the following paragraph the FtT acknowledged that it "did not fully understand" the appellant's evidence as to the financial transactions [30]. The FtT failed to take into account the evidence of a letter adduced from the Managing agents that an administrative error had been made.
11. The FtT's consideration of Article 8 was minimal and cursory and failed to engage with the relevance of the evidence adduced which included the fact that the child is a British citizen [33]. There was no proper consideration of where the child's best interest lay or any reference to or consideration of section 117B(6) Nationality, Immigration & Asylum Act 2002 as amended.
12. The FtT's consideration of all material matters was in my view wholly inadequate such as to amount to a material error of law. There is a material error of law in the decision which shall be set aside.

### **Remaking the decision**

13. Having set aside the decision and reasons I proceeded to remake the decision. Ms Gherman produced a supplementary bundle of evidence and was content for me to decide the appeal on that evidence. Mr Tarlow had been served with the same and made no submissions.
14. Having considered all the evidence before me including that before the FtT and in the supplementary bundle, I am satisfied that there is a genuine and subsisting relationship between the appellant and her husband, and that they have lived together since the appellant arrived in the UK and that they intend to live together permanently

(E-LRTP 1.2 - 1.10). The Eligibility requirements (E-LTRP 1.2-4.1) are met as are the Suitability requirements, and accordingly the appellant has met R-LTRP (a),(b) & (c) and (d). I further find that the financial requirements under the partnership rules have been met. Ex 1(a) applies having regard to the appellant's child who is a British citizen and her best interests lie in remaining in the UK with both of her parents and it would not be reasonable for her to leave the UK as she would have to do if the appellant left given her age. I allow the appeal under the Immigration Rules with reference to the partner route. As a consequence the appeal is allowed on human rights grounds based on family life. Under Article 8 it would be disproportionate for the appellant to be removed from the UK when she has a British husband and child and the financial and other requirements are met under the rules in relation to family life. Section 117B(6) applies and there is no public interest in these circumstances.

15. I find that the parties were living together at [..... Road]. There was evidence to show that the parties were living at [..... Road] and joint names appeared on some documents (A/B pages 28-33, 35 -39, 53, 57-59 and 207, 456-457). I find that the appellant produced reliable documentary evidence to show that the sponsor was the father of her child which included her birth certificate naming the sponsor and giving the address of [..... Road], her British passport and a DNA report confirming that the appellant and sponsor are the child's parents. I further find that the couple are now expecting their second child. There is in addition photographic evidence of the couples' marriage and of them with their young child.
16. As to finances I have evidence in the supplementary bundle of a letter from the sponsor's accountant, calculation for 2017/2018, payslips for employment as a director of his business and bank statements showing the salary paid into his account in addition to rental income. The sponsor has two sources of income which are his salary as a director and rental income from his property. I conclude that the sponsor had an income of £33,589.00 for the financial year 2017 - 2018.

**Decision**

17. The appeal is allowed on human rights grounds.

Signed Date 17.7.2018

GA Black  
Deputy Judge of the Upper Tribunal

**FEE AWARD** - as I have allowed the appeal I make a fee award of £100.00.

Signed Date 17.7.2018

GA Black  
Deputy Judge of the Upper Tribunal