



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17394/2016

THE IMMIGRATION ACTS

Heard at Field House
On 29 June 2018

Decision & Reasons Promulgated
On 23 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

N A

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Home Office Presenting Officer

For the Respondent: Mr A Maqsood, Counsel instructed by Lamptons Solicitors

DECISION AND REASONS

1. Although the Secretary of State is the appellant in this appeal I will refer to the parties as they were referred to before the First-tier Tribunal.
2. The appellant is a citizen of Pakistan born on 6 February 1992. On 18 February 2015 he applied for indefinite leave to remain in the UK as the spouse of a person settled and present in the UK. On 2 July 2016 his application was refused by the respondent on the basis that in 2012 he had used deception to obtain an English language certificate by engaging a proxy test taker. The appellant appealed and the matter came before Judge Goodman at Taylor House on 12 December 2017.

3. In a decision promulgated on 22 December 2017 the judge found that the appellant had engaged in deception and used a fraudulently obtained English language certificate in an immigration application made in 2012. However, despite this finding of deception, he allowed the appeal on the basis that removal of the appellant from the UK would be contrary to Article 8 ECHR. The judge reached this conclusion because of the appellant's relationship with his British citizen wife (who he found had a recent history of psychosis and mental health problems) and his daughter (who was born on 20 July 2017 and was primarily cared for by the appellant). At paragraph 36 of the decision the judge stated:

“The baby herself could obtain a British passport, having been born here of a British mother. She is not of an age to have otherwise a practical attachment to the UK. She has grandparents in both countries. The difficulty here is the mother's mental health. She describes her moods as fluctuating. The psychiatrist's letter gives no prognosis, and Ms Chowdhury did not give other details of her current treatment, but it cannot be said with confidence that she has yet made a recovery. In mental health, the support of her London family and the familiar environment must be important. Were she to go to live in Pakistan, she could have some support from her husband's family, but they are strangers, and adapting to life in Pakistan, very different from London, would be a strain even for those with robust mental health, even if raised by parents with a Pakistani background and so with some basic knowledge, and adapting to life in Pakistan, probably without employment, may be very difficult indeed for someone with a recent history of psychosis. The considerable added strain may well destabilise her recovery. This in turn may well impact adversely on the health and social development of her infant daughter: children of mentally ill mothers can suffer themselves. Looking at these factors, as things are at present, it is in the child's best interest to remain in the United Kingdom.”

4. Having made the aforementioned findings the judge concluded at paragraph 39:

“Applying proportionality by balancing the various factors, the weight to be attached to the child's interest must be substantial, and added to that is the state of the marriage which will come under strain on removal to Pakistan. Against that is the state's interest in discouraging cheating in immigration applications. Were it not for that, the appellant is otherwise unobjectionable. Balancing the two sides, the preponderance favours the appellant.”

5. The grounds of appeal submit that the judge misdirected himself by allowing the appeal on human rights grounds despite finding that the appellant had engaged in deception. The grounds also state that there was no evidence that the appellant's wife's recovery from psychosis would be destabilised by life in Pakistan as the evidence (which took the form of a psychiatrist's letter) did not include a prognosis and the judge failed to give adequate reasons for finding relocation to Pakistan would be detrimental to the health of the appellant's wife. The grounds also state that the judge failed to consider that the appellant has a poor immigration history given his use of deception and failed to recognise that his criminality is a powerful reason to find against him. The grounds also submit that there is nothing to prevent the appellant returning to Pakistan to apply for entry clearance.

6. At the error of law hearing Mr Maqsood, on behalf of the appellant, sought permission to cross-appeal. I refused the application as there was no good reason for the application to be made so late. In any event, after reviewing the content of the grounds set out in the cross-appeal application, it appeared to me (and I raised with Mr Maqsood) that the arguments therein appeared to be submissions relevant to a remaking of the appeal in the event that I were to find an error of law rather than a challenge to the decision of the First-tier Tribunal. I have not had regard to the cross-appeal in this error of law decision.
7. The submissions of Mr Melvin, in sum, were that given the finding of deception there was inadequate reasoning to justify allowing the appellant to remain in the UK. He also argued that the evidence before the judge did not support the conclusion that the appellant's wife's mental health would be harmed by a move to Pakistan. Mr Maqsood argued in response that the judge had engaged in a balancing exercise where all relevant factors had been taken into account and that adequate consideration had been given to the appellant's poor immigration history.

Analysis

8. The issue before the First-tier Tribunal was whether removing the appellant from the UK would be a disproportionate interference with the family life he enjoys in the UK with his wife and child under article 8 ECHR. This required a balancing exercise, having regard (but not limited) to the factors specified in Section 117B of the Nationality, Immigration and Asylum Act 2002.
9. The judge has balanced the factors for and against removal of the appellant as follows:
 - (a) The judge found that the appellant's use of deception weighed against him. At paragraph 39 the judge referred to "the state's interest in discouraging cheating in immigration applications."
 - (b) Weighing on the other side of the scale, the judge found that the best interests of the appellant's daughter would be for the family to remain (together) in the UK and that the appellant's wife's mental health would suffer if she were to relocate to Pakistan. The judge also found that some weight should attach to the appellant's private and family life with his wife given his length of residence in the UK, that he spoke some English and could "presumably be employed again".
10. I do not accept the argument of Mr Melvin that the judge failed to adequately consider the appellant's poor immigration history. At paragraph 39, which is the paragraph in which the judge undertook the article 8 balancing exercise, there is a clear and unambiguous reference to the appellant's use of deception and the public interest in discouraging it. Although the judge has not explicitly mentioned that the use of deception can amount to criminality, I am satisfied that the judge has not failed to appreciate that use of deception is a serious matter which must weigh heavily against the appellant in the article 8 proportionality assessment.

11. Mr Melvin argued that the judge's findings in respect of the appellant's wife's mental health were not sustainable as the evidence does not establish that recovery from psychosis would be destabilised by life in Pakistan. However, the appellant adduced and relied upon a letter from a consultant peri-natal psychiatrist which stated as follows:-

"This is to confirm that N A is currently at home caring for his wife, and their young baby, full time.

His wife suffered a severe postpartum psychosis following the birth of their daughter in July 2017. She has required intensive input and support from mental health services and is still in the recovery phase, requiring medication, follow-up from our service, and very close monitoring and support at home from her husband."

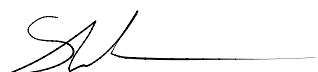
12. The evidence of the psychiatrist was that the appellant's wife requires intensive input and is still in the recovery phase. There was no evidence before the judge as to the level of mental health care she would receive in Pakistan, but irrespective of the availability and quality of support in Pakistan the move would cause disruption to the close monitoring that the psychiatrist considered necessary. Based on the evidence that was before the Tribunal, the judge was entitled to conclude that the appellant's wife's recovery could be destabilised by moving country.
13. I also am of the view that the judge's findings in respect of the child's best interests were sustainable. Given the appellant's role in caring for his daughter, it would clearly not be in her best interests to be separated from him and the judge was entitled to find that it would be in her best interests to be with both parents. The judge, at paragraph 36, considered the implications for the child of moving to Pakistan with both parents and concluded that because of her mother's mental health problems and the strain this could cause her recovery from psychosis it would be in the child's best interests to remain in the UK. It was open to the judge to find, as he did at paragraph 36, that a child can be negatively impacted by a parent's mental illness. If, as I have found above, the judge did not err in finding that on the balance of probabilities the appellant's wife's mental health would be harmed by a move to Pakistan, it follows that the judge did not err in finding that such a move would not be in the best interests of the child.
14. The judge has made sustainable findings about the appellant's wife's mental health and his daughter's best interests and he has directed himself appropriately as to the significance of the appellant's use of deception. The balancing of these considerations was a matter for the judge and although another judge might have reached a different conclusion, it was open to the judge to find that on this occasion even though the public interest in removal was high (given the fraudulent conduct) it was outweighed by the best interests of the appellant's daughter taken together with the mental health difficulties of the appellant's wife.

Decision

15. The appeal is dismissed

16. The decision of the First-tier Tribunal does not contain a material error of law and stands.
17. No anonymity direction is made.

Signed

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line.

Deputy Upper Tribunal Judge Sheridan

Dated: 18 July 2018