



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/22432/2016

THE IMMIGRATION ACTS

Heard at Field House
On 16th August 2018

Decision & Reasons Promulgated
On 3rd September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS AHLAM [A]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Ms Rachel Francis, Counsel instructed by Milestone Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Greasley made following a hearing at Hatton Cross on 25th January 2018.
2. The claimant is a citizen of Algeria born on 19th August 1980. She arrived in the UK as a visitor with leave to remain from 1st December 2015 until 1st June 2016 having been refused leave to enter on three previous occasions. She is married to a British citizen and the couple have two young children born in April 2012 and October 2013. The children are British citizens, as is her husband.

3. The claimant returned to Algeria in January 2016 but came back to the UK one month later and made the present application for leave to remain as the partner of her British national spouse. She was refused and the appeal came before Judge Greasley who allowed the appeal.
4. The Secretary of State sought permission to appeal against Judge Greasley's decision on the grounds that he had effectively treated the children's best interests as a trump card, had failed to give adequate consideration as to whether the claimant should be expected to return to Algeria in order to make the appropriate entry clearance application and had erred in his reliance upon the cases of Zambrano and SF and Others (guidance post 2014) Albania [2017] UKUT 11020.
5. Permission to appeal was granted by Judge Burrell on 4th June 2018. The claimant then served a detailed response on 8th July 2018.

The Hearing

6. At the hearing Mr Walker acknowledged that the Rule 24 response filed by the claimant's solicitors, had been extremely helpful and whilst he was not in a position to withdraw the grounds of appeal he did not wish to make any submissions upon them.
7. Ms Francis relied on her reply and submitted that the decision should stand.

Findings and Conclusions

8. It is incorrect to say that the judge treated the best interests of the children as a trump card. He did consider their best interests in some detail, but also had regard to other factors and specifically stated that they were only one factor to be considered in the balancing exercise as a whole.
9. It is simply wrong to state that there was no consideration as to whether the claimant should return to apply for entry clearance. At paragraph 29 the judge stated that it was not reasonable or practical to expect the claimant to make an out of country application since the two very young children will be separated from their mother for an uncertain period of time.
10. The Rule 24 response cites the policy guidance at paragraph 11.2.3 Appendix FM 1.0 family life (as a partner or parent) and private life: ten year route as follows:

“Save in cases involving criminality the decision-maker must not take a decision in relation to the parent or primary carer of a British citizen child where the effect of that decision would be to force that British child to leave the EU regardless of the age of that child. This reflects the European Court of Justice judgment in Zambrano.

In such cases it would usually be appropriate to grant leave to the parent or primary carer, to enable them to remain in the UK with the child, provided that there is satisfactory evidence of a genuine and subsisting parental relationship.

It may however be appropriate to refuse to grant leave where the conduct of the parent or primary carer gives rise to considerations of such weight as to justify separation, if the child could otherwise stay with another parent or alternative primary carer in the UK or in the EU.

The circumstances envisaged could cover amongst others:

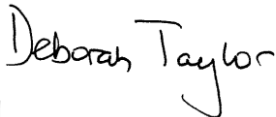
- (a) criminality falling below the threshold set out in paragraph 398 of the Immigration Rules;
- (b) a very poor immigration history such as where the person has repeatedly and deliberately breached the Immigration Rules."

11. In this case the Secretary of State accepts that the claimant has no criminal history and there are no suitability issues in her case. Indeed, she appears to have complied with the requirements of her visit visa in that she left within the currency of that visa to return to Algeria in January 2016. She is not someone who has shown a disregard for the requirements of the Immigration Rules. Accordingly, there is no basis upon which to conclude that her case is not fully covered by the policy guidance such that the decision should fall in her favour.
12. This decision was plainly open to the Immigration Judge, he was entitled to reach the decision which he did for the reasons which he gave.

Notice of Decision

The original Immigration Judge did not err in law and his decision stands.

No anonymity direction is made.



Signed

Date 25 August 2018

Deputy Upper Tribunal Judge Taylor