Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/26750/2016

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 18 April 2018	**On 23 April 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

ENTRY CLEARANCE OFFICER

Appellant

and

YOUNES BAMIRI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mrs Pettersen, a Senior Home Office Presenting Officer
For the Respondent: Miss Khan, instructed by Howells Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, Younes Bamiri, was born on 11 February 1988 and is a male citizen of Morocco. He applied for entry clearance to the United Kingdom to join his wife, [SW], a British citizen (date of birth: 14 May 1976). I shall refer hereafter to [SW] as the "sponsor". The Entry Clearance Officer (ECO) refused the application on 8 November 2016. The appellant appealed to the First-tier Tribunal (Judge Moxon) which, in a decision promulgated on 25 September 2017, allowed the appeal on Article 8 ECHR

grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal. The grounds challenge the judge's decision on the basis that he treated Section 55 of the Borders, Citizenship and Immigration Act 2009 as a "trump card" elevating the consideration of the children's "best interests" above that required as a "primary consideration". The judge's "balancing exercise" under Article 8 ECHR had not properly been informed by the operation of Section 117B of the 2002 Act (as amended). Secondly, the Entry Clearance Officer submits that his/her decision does not alter family life "as it currently exists". His "*status quo*" argument relies on the fact that the sponsor can visit her husband in Morocco with the couple's child.

2. The judge acknowledged that the appellant could not satisfy the requirements of the Immigration Rules as regards financial support. Neither he nor the sponsor are earning the income required by the Rules.

3. A careful reading of the judge's decision indicates that the "trump card" argument appears to have arisen out of the way in which he has structured his analysis. At [25] the judge found as a fact that family life between the sponsor and the child and the appellant could only take place in the United Kingdom. The sponsor has children by a previous relationship who, in turn, are the subject of a Family Court contact order in favour of their father. For the purposes of the analysis, it was impossible for the sponsor to live permanently outside the United Kingdom because, if she did so, she would be separated from her children. Having concluded that family life could not reasonably take place anywhere other than the United Kingdom, it is perhaps a little surprising that the judge at [32] wrote that, "had the appellant and sponsor not had a child together I would have had little hesitation in dismissing the appeal". That observation is perhaps problematic in light of the fact that the judge had already found at [25] that, even if the couple did not have a child, they could not continue their genuine and subsisting relationship anywhere other than in the United Kingdom. The judge's observations at [32] give rise, at least *prima facie*, to the assumption that the existence of the child "trumped" all other considerations.

4. Having said that, I consider the judge's analysis to be thorough and legally accurate. The judge has made clear that he considered the best interests of the children as a primary consideration, not a paramount consideration; there is nothing in the analysis which should lead one to disbelieve him. As the judge observed, the facts were not in dispute. The judge also applied the relevant parts of Section 117 of the 2002 Act, setting out his findings at [31]. It was reasonable for the judge to observe that, although the couple did not meet the financial requirements of the Immigration Rules, the presence of the appellant in the United Kingdom will allow the family income to increase; the sponsor will be able to work additional shifts should she have appropriate childcare. Upon a careful consideration of the decision, I accept that the apparent inconsistency between paragraphs [25] and [32] which I have identified above does not undermine the legality of the decision. The judge, has, in effect, found

that the application of Section 117 would, in the absence of the existence of the child, have probably led him to dismiss the appeal notwithstanding the fact that family life could only be pursued in the United Kingdom. The existence of a child has tipped the balance in favour of the appellant; it has not acted as a "trump card" obliterating all other negative considerations. At the end of the day, the outcome achieved was available to the judge on the facts. He has justified his decision by adequate and cogent reasoning. The Entry Clearance Officer does not agree with the outcome but, with respect, that is not the point. I cannot find any error in the judge's decision either as pleaded in the Grounds of Appeal or at all which should lead me to interfere with his conclusion. The appeal is dismissed.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed Date 21 APRIL 2018

Upper Tribunal Judge Lane