



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00624/2016

THE IMMIGRATION ACTS

Heard at Birmingham
On 12 June 2018

Decision & Reasons Promulgated
On 21 June 2018

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL McCARTHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

A C
(ANONYMITY ORDER CONTINUED)

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer

For the Respondent: Mr O Sobowale, instructed by Kausers Solicitors

DECISION AND REASONS

1. The appellant Secretary of State appeals with permission of FtT Judge E B Grant to the Upper Tribunal against the decision and reasons statement of FtT Judge Birk that was issued on 22 January 2018.
2. The grounds of appeal are somewhat lengthy but in summary argue that Judge Birk failed to take proper account of the fact the refugee status of the respondent's wife would be revoked under paragraph 338A of the immigration rules, taken with

paragraph 339AB (misrepresentation). These paragraphs transpose article 14(3)(b) of the Qualification Directive (2004/83/EC).

3. As a result, the appellant argues that the judge's assessment of the evidence was inadequate, because the fact the respondent's wife has refugee status could not of itself be an insurmountable obstacle to the couple continuing family life together in the Gambia.
4. In addition, the grounds argue that Judge Birk failed to properly assess the reasonableness of expecting the respondent's children leaving the UK, as a result of his own and his wife's departure, because in this case the persistent deception employed by the respondent and his wife meant the test of reasonableness described by the Court of Appeal in *R (MA (Pakistan) & Ors) v SSHD & Anor* [2016] EWCA Civ 705 should have been decided in favour of the public interest factors.
5. Mr Mills admitted that he had represented the appellant in the previous appeal to the Upper Tribunal. On 19 April 2017, Deputy UT Judge Parkes decided the decision and reasons of FtT Judge Jessica Pacey contained legal error that led him to set the decision aside and remit it to the First-tier Tribunal for a fresh hearing by a judge other than Judge Pacey. Judge Parkes recorded that there was no challenge to the dismissal of the protection claim and the appeal was to proceed only in relation to article 8 ECHR.
6. Mr Mills explained that during the hearing before Judge Parkes he had submitted that the behaviour of the respondent and his wife indicated that the respondent's wife had gained refugee status through misrepresentation. I note this is reflected in Judge Parkes's decision at [5] and [9]. Mr Mills informed me that he had minuted the Home Office file to have it returned to him so that he could start revocation procedures in relation to the grant of refugee status to the respondent's wife and children. Inefficiencies in the Home Office meant that instruction was overlooked and the appeal returned to the First-tier Tribunal for a fresh hearing without any consideration being given to the question of revocation of the wife's refugee status.
7. Once returned to the First-tier Tribunal, the appeal was listed and came before Judge Birk on 8 January 2018. Judge Birk records that the Secretary of State was represented by Ms Graham; Mr Mills informed me it was in fact Ms Gordon who represented the Secretary of State. At [13], Judge Birk recorded that Ms Gordon identified the Secretary of State was considering revoking the refugee status granted to the respondent's wife and children. It is conceded the refugee status had not been revoked at that date. In fact, it continues to remain in effect.
8. Before I continue, I should mention that Mr Mills did not refer me to paragraph 338A or 339AB of the immigration rules, or to article 14(3)(b) of the Qualification Directive. He sought to present his argument in more general terms, suggesting that a person granted refugee status may cease to be a refugee. A grant of refugee status does not make a person a refugee. The person must show they are a refugee to be granted such status. Similarly, a person with such status may cease to be a refugee because of a

change in circumstances. Mr Mills suggested that was the situation here, and argued that the respondent's wife ceased to be a refugee when the respondent made his claim because the respondent's evidence undermined the entirety of the basis on which his wife was granted refugee status.

9. Of course, I am aware that Mr Mills's arguments are supported by the fact that paragraph 338A of the immigration rules, like article 14(3)(b) of the Qualification Directive, is in mandatory terms. This is in contrast with other revocation provisions, which are discretionary (for example, article 14(4)). This is especially the situation here because Judge Birk made very strong findings at [19] and [20] that the respondent and his wife lacked credibility. I accept that on the evidence available, if any when the respondent considers the question of revocation of the refugee status of the respondent's wife, the only possible outcome will be for that status to be revoked. That is the consequence of a mandatory provision.
10. But I am also very much aware of the overriding principle and the need to deal with cases fairly and justly. The respondent's wife was not a party to his appeal. No case has been brought against her to say that her refugee status was revoked. In fact, Ms Gordon informed Judge Birk at [13] that the status had not been revoked. Were her refugee status to be revoked, then I am aware she would have a right of appeal under s.82(1)(c) of the Nationality, Immigration and Asylum Act 2002. It would be unjust for me to presume the outcome of such an appeal when the procedure to set such an appeal in motion has not begun. This same principle would apply to Judge Birk when she heard the appeal in the First-tier Tribunal.
11. I am aware that the appellant Secretary of State had sufficient time before the appeal was reheard in the First-tier Tribunal to set in motion revocation provisions. Mr Mills recommended that course of action to be undertaken but inefficiencies in the Home Office provided an obstacle he could not foresee. It was open to Ms Gordon to seek an adjournment once she noticed that revocation seemed to be an issue, as recorded by Judge Birk. I can assume Ms Gordon had sight of Mr Mills's file note and no doubt had access to a senior caseworker for advice. Yet she did not seek an adjournment and was content for the appeal to proceed. Given the history of the appeal, and the actions of the Home Office, there was no basis for Judge Birk to consider adjourning of her own motion.
12. Although I accept Mr Mills's submission that a person is not a refugee merely because they hold refugee status (and when looking at the Qualification Directive I noticed this is consistent with article 13), I am unable to agree with him that a person ceases to benefit from refugee status once granted merely because they cease to be a refugee. I come to this conclusion bearing in mind that refugee status is granted primarily to prevent refoulement. I note article 21 of the Qualification Directive contains provisions that revocation of refugee status is a prerequisite to refoulement.
13. The failure of the appellant Secretary of State to take action to revoke the refugee status of the respondent's wife means that when Judge Birk was determining the article 8

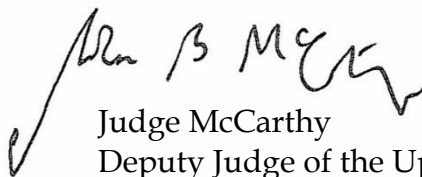
ECHR family life issues, she had to regard the respondent's wife as person with refugee status and the benefits and protections that attracts. That includes protection against refoulement.

14. It follows that it was necessary for Judge Birk to treat the refugee status held by the respondent's wife as an insurmountable obstacle to their family life continuing outside the United Kingdom, which is what she does at [32]. Such a finding means the respondent benefits from paragraph EX.1 of appendix FM to the immigration rules and his appeal had to be allowed because the decision to refuse his human rights claim was unlawful under s.6 of the Human Rights Act 1998. This is the situation even though Judge Birk made strong negative findings against the respondent and his wife.
15. Given the findings made in terms of the marital relationship and article 8 ECHR, any issue relating to *MA (Pakistan)* must be immaterial to the outcome. There was no need for Judge Birk to consider the situation relating to the children in any greater detail than she did. I find there is no legal error in the approach taken by Judge Birk.
16. This outcome may, however, be a pyrrhic victory for the respondent. The Secretary of State has indicated he wishes to revoke the refugee status of the respondent's wife and children and that course of action remains available to the Secretary of State because the findings of Judge Birk regarding the credibility of the respondent and his wife are preserved. It will be for the Secretary of State to decide what leave should be granted to the respondent, and it will no doubt be uppermost in the Secretary of State's mind (or at least in the mind of the case worker who is charged with dealing with the cases) to consider the respondent's situation alongside that of his wife and children.

Notice of Decision

The appeal to the Upper Tribunal is dismissed because there is no legal error in FtT Judge Birk's decision.

Signed



Date

18 June 2018

Judge McCarthy
Deputy Judge of the Upper Tribunal