



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/07488/2017

Appeal Number:

THE IMMIGRATION ACTS

Heard at North Shields

**Decision &
Promulgated**

Reasons

On 12 October 2018

On 12 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**M. H.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Iraq, entered the United Kingdom illegally in 2010 and claimed asylum. That claim was refused, and his appeal rights against that refusal were exhausted on 8 October 2010.
2. The Appellant lodged a further protection claim on 12 March 2014, which was refused on 20 July 2017. An

appeal against the decision to refuse this protection claim was heard and determined by First Tier Tribunal Judge Hands in a decision promulgated on 8 June 2018. The protection appeal was dismissed, but the Appellant's Article 8 appeal based upon his relationship with his two British citizen children was allowed.

3. Permission to appeal was granted to the Respondent by First tier Tribunal Judge Bird on 4 July 2018.
4. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence.
5. Thus the matter came before me.

The hearing

6. When the appeal was called on for hearing the Appellant notified me that his former partner, and the mother of his two children, was unable to attend. He said that he had expected her to do so, as indeed she had attended an earlier hearing, albeit not that before Judge Hands. He informed me that his partner was hospitalised with a brain tumour, and that he did not seek an adjournment, since he felt able to deal with the Respondent's complaints himself.

The challenge

7. The grounds are not well drafted, and give the impression that they simply seek to re-argue the appeal. Mr Diwnycz struggled to distil from them any error of law challenge, and ultimately took them to assert that Judge Hands had failed to give adequate reasons for her findings (as the Judge who granted permission had done).
8. The reality is that the individual complaints raised in the grounds have no merit. The Judge clearly had well in mind that she needed to approach the Appellant's evidence with caution. She had after all begun by reminding herself that the Tribunal had dismissed as untrue the 2010 protection appeal, and went on to dismiss as untrue the protection appeal advanced before her. That did not mean that the Article 8 appeal was bound to fail. It was after all, not in dispute that the Appellant was the father of two British citizen children, and that he was unable to live in Birmingham as a result of the threats that had been made against his safety in that city. It was well open to the Judge to accept on the evidence before her, that there was a genuine and

- subsisting parental relationship with those two children, and she gave entirely adequate reasons for doing so.
9. The Appellant did not need to demonstrate that he had sole parental responsibility, as ground 4 avers, and the grounds do not suggest that any immaterial evidence was taken into account, or that any material evidence was left out of account, when addressing the issue of whether he had a genuine and subsisting parental relationship with his two British citizen children.
 10. The Judge did not address directly the s117B(6) test, and it is fair to say that her decision does not contain a clear finding as to whether it was reasonable to expect either child to leave the UK to live in Iran. It is however possible in my judgement to infer such a finding from the text of the decision, and if that is the proper inference to be drawn from it, then the appeal was bound to succeed because Parliament has stipulated that in those circumstances the public interest does not require the removal of a father.
 11. What the Judge did do was to consider the effect upon the two children of their father's removal. She concluded that there would be a detrimental effect upon them both [46]. In so doing it is, just, arguable that she mistakenly had in mind the s117C(5) test that would only be relevant in the event of a parent's deportation; circumstances which did not arise in this appeal. However, it is in my judgement far more likely that she was either returning to the best interests of the children, which she had considered earlier as lying in favour of the Appellant's being able to remain in the UK and continue to parent his two children [41], or seeking to draw her findings together into one overall conclusion on the proportionality of the decision under appeal. What is abundantly clear however is that the overall finding that it was disproportionate to remove the Appellant was one that was well open to her on the evidence. In my judgement the reasons offered for that conclusion were adequate. The Respondent as the losing party can see that the appeal succeeded because the Judge accepted as genuine and subsisting and beneficial to all, the Appellant's parental relationship with his British citizen children.
 12. Accordingly, and notwithstanding the terms in which permission to appeal was granted to the Respondent the grounds fail to disclose any arguable error of law in the approach taken by the Judge to the appeal.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 8 June 2018 contained no error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 12 October 2018

A handwritten signature in black ink, appearing to be 'JM Holmes', written in a cursive style with a long horizontal flourish extending to the right.