



Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: HU/00744/2018

THE IMMIGRATION ACT

**Heard at Civil Justice Centre
Manchester**

On 12th June 2019

**Decision & Reasons
Promulgated**

On 14th June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

MT

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Khan Counsel instructed by WTB Solicitors

For the Respondent: Mr Mc Vitie Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Holt promulgated on the 21st February 2019, whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on Article 8 of the ECHR.
2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I consider it appropriate to make an anonymity direction.
3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Welsh on 15th April 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. The material part of the grant of leave provides:-

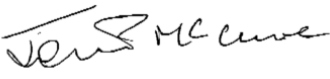
2 It is arguable that the Judge applied the incorrect limb of Ex1. This error is potentially material, as notwithstanding the doubts the judge has regarding the evidence as outlined in[37], at [41(2)] the judge appears to accept that the interference would engage Article 8. It is arguable that the judge has failed to make it clear findings regarding Stage II of the Razgar test, and if that was met has not applied the correct test under s117B(6) or Ex1.
5. At the outset of the hearing before me the respondent's representative conceded that there were material errors of law in the decision as set out in the grounds of appeal.
6. It was conceded that in paragraph 39 the judge had applied the wrong test as to whether the appellant could maintain her relationship with the children of her ex-partner. The judge in considering whether or not the relationship with the children could be maintained had applied the test of whether or not there were insurmountable obstacles to the relationship continuing.
7. The respondent's representative accepted that insurmountable obstacles was not an applicable test in the circumstances. Whether dealing with appendix FM EX.1. or Section 117B(6) the test to be applied was whether or not it was reasonable for the children to leave the United Kingdom. Of course that was predicated upon whether or not there was a genuine and subsisting parental relationship between the children and the appellant.
8. The respondent's representative also conceded that in accordance with the case of R (on the application of RK) v SSHD IJR (2016) UKUT 00031 (IAC) an assessment had to be made whether or not the relationship between the appellant and the children constituted a genuine and subsisting parental relationship such as to engage

Appendix FM or Section 117B (6) of the Nationality, Immigration and Asylum Act 2002.

9. The respondent's representative accepted that the errors of law were such that the appropriate course was for this matter to be remitted back to the First-tier Tribunal for hearing afresh. On behalf of the appellant it was accepted that was the proper course to take.
10. Accordingly in light of the concession I rule that there are material errors of law in the decision of Judge Holt and I allow the appeal to the extent that the case is to be remitted back to the First-tier Tribunal for hearing afresh.

Notice of Decision

11. I allow the appeal to the extent that it is remitted back to the First-tier Tribunal for hearing afresh.

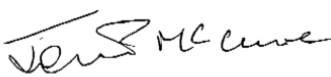
Signed 

Deputy Upper Tribunal Judge McClure

Date 12th June 2019

Direction regarding anonymity- rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed 

Deputy Upper Tribunal Judge McClure

Date 12th June 2019