



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/04160/2018

THE IMMIGRATION ACTS

Heard at Bradford

On 2 January 2019

**Decision & Reasons
Promulgated**

On 31 January 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

**MUHAMMAD [S]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Hashmi, instructed by Kingswell Watts Solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant Muhammad [S], was born on 19 December 1985 and is a male citizen of Pakistan. By a decision dated 19 January 2018, the Secretary of State refused the appellant's human rights application to remain in the United Kingdom on the basis of his relationship with his partner and child. He appealed to the First-tier Tribunal (Judge Dearden)

which, in a decision promulgated on 21 June 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The judge found that the appellant had a genuine and subsisting parental relationship with a qualifying child (the appellant's child with his partner is a British citizen). However, he found it would be reasonable to expect "the child to leave the United Kingdom bearing in mind her young age." There is little if any reasoning behind that conclusion although earlier in the decision [8] the judge observed that "the child is only 2 years of age and is obviously completely dependent upon her mother and father. She has no life outside the family home save with the extended family." The difficulty for the judge in this case is that he appears to have made no reference to the respondent's own policy in respect of those who have subsisting relationships with qualifying children. Mrs Pettersen, who appeared for the Secretary of State, told me that the Secretary of State had recently (December 2018) amended that policy in the light of the judgment in *KO (Nigeria) 2018 UKSC 53* but she accepted that the judge should have considered the policy and, in the absence of any evidence of criminality on the part of the appellant, he should have allowed the appeal, the Secretary of State accepting (through his policy) that it is not reasonable to expect a British qualifying child to return to a parent's country of origin thereby forego the advantages of British (and, for the time being, European Union) citizenship. In consequence, Mrs Pettersen offered no submissions in support of the judge's decision.
3. In the circumstances, I allow the appeal. Further, I remake the decision allowing the appeal on Article 8 ECHR grounds.

Notice of Decision

4. The decision of the First-tier Tribunal promulgated on 21 June 2018 is set aside. I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 19 January 2018 is allowed on human rights grounds (Article 8 ECHR).
5. No anonymity direction is made.

Signed

Date 10 January 2019

Upper Tribunal Judge Lane