Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/07961/2018
HU/07964/2018
HU/07969/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13th June 2019	**On 25th June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FOZIA IFFET
H A
T A
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:

For the Appellant: Mr S Walker, HOPO
For the Respondents: Ms P Yong of Counsel, instructed by Wimbledon Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Walker made following a hearing at Hatton Cross on 15th October 2018.

2. The judge allowed the claimants' appeals. They are the mother and two minor children who are citizens of Pakistan appealing against the decision of the Secretary

of State, dated 19th March 2018, to refuse their human rights claims for leave to remain in the UK on the basis of their family and private lives.

3. The judge found that the claimants could not meet the requirements of the Immigration Rules. He accepted that they were in a genuine and subsisting relationship with the sponsor, who is a British citizen, but did not consider that there were any insurmountable obstacles to the family returning to Pakistan. Nor did he accept that either paragraphs EX.1(a) or EX.1(b) applied. Nevertheless, he allowed the appeals outside of the Immigration Rules, taking the following matters into account. First, the claimants had already been granted two and a half years' leave to come to the UK and to continue with their family life. Moreover they now had a third child, who is a British citizen. Second, applications for citizenship had been made on behalf of the two minor appellants and in the view of the judge it was likely that they would be successful since they were born after their father had been granted indefinite leave to remain. He also took into account the fact that both twins have medical conditions. Whilst he had some concerns about the family's finances and the fact that the first claimant did not speak English he concluded nevertheless that the decision of the Secretary of State was disproportionate.

The Grounds of Application

4. The Secretary of State sought permission to appeal on the grounds that the judge had not given adequate reasons for his decision. The judge had noted that the claimants could not succeed under the Immigration Rules, which was a significant issue in assessing proportionality, and he had not properly considered the public interest and relevant factors, in particular the family's heavy reliance on public funds. The two minor appellants were not qualifying children and had only lived in the UK for four years. The judge had been entirely speculative as to the outcome of the twins' British citizenship application. It was clear that the family should leave the UK and the natural expectation was that they could go together.

5. The grounds also refer to a procedural irregularity in relation to the British citizen child but this was not pursued by the Presenting Officer at the first hearing of this case, which took place on 21st February 2019. Mr Avery on that occasion said that it was clear that the Secretary of State had been aware of the existence of that child and no objection had been made to the claimants' representative relying on him at the hearing.

6. Permission to appeal was granted by Judge Hollingworth for the reasons stated in the grounds on 21st December 2018.

7. As mentioned above, this matter was adjourned on a previous occasion so that further enquiries could be made about the resolution of the nationality issue.

The Hearing

8. At the hearing Ms Yong produced a decision made by the Secretary of State refusing to grant the twins British nationality dated 27th November 2018. In that decision the

Secretary of State said that he had decided not to exercise discretion in the claimants' favour under Section 3.1 of the British Nationality Act 1981 because their non-British parent was not settled in the UK. They expected any child seeking registration as a British citizen to be free of conditions to stay here. Ms Yong confirmed that the decision had not been challenged. She nevertheless submitted that the original judge's decision did not contain an error of law because at the date of the hearing the application had not been refused and the judge was entitled to consider that it might well be granted. He had taken into account all of the relevant matters and had come to a conclusion open to him.

9. I am afraid that I disagree. The judge did not adequately articulate why he was allowing the appeal, given that he had found that the claimants could not meet the Immigration Rules and that several of the factors set out in Section 117B(6) of the 2002 Act went against the claimants.

10. It was agreed that the decision could be remade by way of submissions only.

Findings and Conclusions

11. Mr Walker confirmed that there were no credibility issues in this appeal.

12. He accepted that the first appellant was taking English classes and that she was ready to take her English test but that she had not done so because she needed her passport, which was with the Home Office. Nevertheless, in his submission, the decision to refuse to grant leave was proportionate since the appellants could not meet the requirements of the Immigration Rules and could not meet the financial requirements as set out in Section 117B(6) of the 2002 Act, which sets out the public interest considerations applicable in all cases.

13. Section 117B(6) states as follows:

> "The maintenance of effective immigration controls is in the public interest."

14. In this case, the first claimant came to the UK with her two children with leave to enter to join her British citizen husband. She has always had extant leave and she has always abided by immigration control.

15. Section 117B(2) states that it is in the public interest and in particular in the interests of the economic wellbeing of the UK that persons who seek to enter or remain in the UK are able to speak English because persons who can speak English are less of a burden on taxpayers and are better able to integrate into society.

16. The Secretary of State does not challenge the claimant's case, which is that she has been attending English classes for over a year and is ready to take the English test but has not been able to do so because her passport has been with the Home Office.

17. Section 117B(3) states that it is in the public interest and in particular in the interests of the economic wellbeing of the UK that persons who seek to enter or remain in the

UK are financially independent because such persons are not a burden on taxpayers and are better able to integrate into society.

18. The evidence in relation to the British citizen sponsor is that he has worked in the UK with the same employer at least since 2011 on a full-time basis until 2016. Unfortunately, during that year he had three car accidents, which meant that he was unable to work full-time. It is for this reason that, whilst he was able to meet the requirements of the Rules initially in order to sponsor his wife and twin sons, when it came to the renewal of her leave he was only able to work part-time.

19. Since December 2018 he has regained employment at 30 hours a week and there is evidence in the bundle that he has been issued with a licence to act as a private hire vehicle driver in London. At present his earnings are short of the required level. Since he has three non-British dependants to support he has to have an income of £24,800, namely £18,600 for his wife, £3,800 for his first child and £2,400 for the second. Whilst the first claimant is also working for sixteen hours a week, their present income is around £21,000 a year, making a shortfall of £3,800.

20. It is his case that this can be made up by his working as a private hire driver, which appears realistic. Nevertheless as at today's date the fact that he does not meet the requirements of the Immigration Rules must go against him. I do, however, take into account that this is not a family which is a burden on taxpayers since they are not receiving any tax credits.

21. Sections 117B(4) and (5) have no relevance to this appeal since the claimants are not relying on their private life and have never been in the UK unlawfully.

22. Section 117B(6) is, however, relevant. It states that in the case of a person who is not liable to deportation the public interest does not require the person's removal where

    (a) the person has a genuine and subsisting parental relationship with a qualifying child, and

    (b) it would not be reasonable to expect the child to leave the UK.

23. In this case, there is a qualifying child, namely the claimant's third son, who is a British citizen.

24. The best interests of all the children must be taken into account.

25. In the case of the twins there are some serious medical issues. The unchallenged evidence is that they suffer from learning difficulties and one twin, T, has particular problems. He is of small stature and head circumference and has had two operations. His physical problems seem to be generally resolved aside from the learning difficulty and his need for speech therapy. His twin H no longer needs an SEN support plan.

26. Although Mr Walker submitted that it would be reasonable for the claimants to return to Pakistan and make an application for entry clearance to join their British citizen brother and father I am satisfied that it would not be appropriate to expect them to do so. It is clear that both twins have had difficulties in the past and that one twin continues to need medical help. They are now 8 years old and have been here for five years. All of their father's family are here and, I am told, assist in their care. No doubt there are close bonds between the grandparents and the children.

27. The situation is further complicated by the fact that the first claimant is expecting another baby at the end of August and has a number of medical issues connected with her pregnancy. It is clear that separating this family at this stage would be quite unrealistic.

28. I take into account the fact that this is a family which has always abided by immigration control and was only prevented from meeting the requirements of the Immigration Rules at the end of the first two and a half period of leave due to factors beyond their control. They are a hardworking family who have done their best in difficult circumstances. Were it not for the sponsor's car accidents there is no reason to think that he would not have been able to provide a sufficient income for his family. Although they fall short of the financial requirements at present there is strong and unchallenged evidence that in the near future this situation will change when he is able to take up work following the issuing of his licence to act as a private hire vehicle driver.

29. Clearly, the medical issues for this family are also significant. One of the twins requires ongoing help from the medical team which has supported him for many years. They are now 8 years old and whilst they are not qualifying children, nevertheless their best interests must be taken into account. I accept that they have integrated into the UK and have put down roots here, not least with their grandparents and father's extended family. Most importantly, their youndest sibling is a British citizen

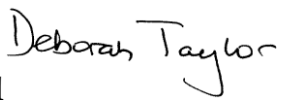
30. The public interest must be given significant weight and at present the claimants are not able to meet the requirements of the Immigration Rules. On the other hand, they are not in fact dependent on public funds and indeed it is clear from the bank statements that they have been able to accrue some savings.

31. Taking into account the fact that one of the children is a British citizen, another British child is about to be born, that two have medical issues and that this family is in the situation it is in due to factors beyond their control, I conclude that the likely interference with their family life outweighs the public interest requirements .I therefore reach the same conclusion as the original Immigration Judge.

Decision

The original judge erred in law. His decision is set aside. It is remade as follows. The claimants' appeals are allowed.

No anonymity direction is made.



Signed Date 22 June 2019

Deputy Upper Tribunal Judge Taylor