



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

Appeal Number: HU/16135/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 June 2019**

**Decision & Reasons Promulgated  
On 24 July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

**ALTANTUYA [D]**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Ubah Dirie of Counsel instructed by J McCarthy Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals against a decision made by First-tier Judge Kimnell (FtT) promulgated on 6<sup>th</sup> March 2019 in which the appellant's applications under the Immigration Rules and on human rights grounds were dismissed.
2. The grounds of appeal argue that the FtT failed to consider material evidence pertinent to the assessment of the existence of very significant obstacles to the appellant and her son integrating in Mongolia and in the consideration of best interests of the child. The appellant had suffered from domestic violence from her ex-partner who had since been deported

to Mongolia. The appellant's son suffered from a congenital kidney disorder and would not be able to live safely in Ulaanbaatar and/or Mongolia because of the high level of pollution which would be contrary to his best interests.

### **Permission to appeal**

3. Permission to appeal was granted by FtTJ PJ Hollingworth on 3.5.2019 who found arguable grounds that the FtT's analysis was insufficient before finding that paragraph 276ADE was not met. The FtT arguably ought to have considered the evidence as to the degree of risk from the ex-partner now living in Mongolia. The FtT's consideration of the best interests of the child failed to sufficiently analyse the feasibility of living away from a polluted area having accepted that the appellant would in the short term live with her parents in Ulaanbaatar. The FtT failed to assess the continuing risk of deterioration in the child's condition and whether this would require treatment as opposed to continued monitoring.

### **Error of law hearing**

4. At the hearing Ms Dirie expanded on the grounds of appeal and referred to her skeleton argument prepared for the FtT and an article entitled "Environment pollution and kidney diseases" published in "Nature" in February 2018 and UNICEF evidence on pollution levels in Mongolia. She argued that the appellant's son's kidney condition required continued monitoring in the UK. There was expert evidence from UNICEF WHO that there was an environmental crisis in Mongolia. Half of the population in Mongolia lived in Ulaanbaatar and it was not feasible for the appellant and her son to live away from her family who lived there. The appellant did not know where her ex-partner lived in Mongolia. It was not adequate for the FtT to conclude that treatment was available in the event that the health of the child would be damaged and harmed by environmental pollution.
5. Mr Tarlow opposed the application submitting that the appellant and her son could live outside of Ulaanbaatar where there was less pollution. The FtT had considered all the relevant evidence and made sustainable findings open to it at [36- 37].

### **Discussion and decision**

6. I find that there was an error in law by the FtT in failing consider material evidence. The FtT failed to adequately consider where the best interests of the appellant's child lie having little regard to the health risks associated with kidney disease by exposure to pollution. The FtT's section 55 analysis was insufficient as it failed to properly consider the feasibility of the appellant living away from excessively polluted areas having accepted that in the short term the appellant would likely reside with her parents who live in Ulaanbaatar. The FtT did not consider the risks of deterioration in the child's condition which would require monitoring.

There was no consideration by the FtT as to the risks posed by the appellant's former partner but (as was accepted by Ms Dirie) given that there is no evidence as to his whereabouts in Mongolia, realistically this point has less merit although there was evidence that the ex-partner had been contacting the appellant.

7. I am satisfied that the FtT whilst accepting the background evidence as to the dangers posed by pollution failed to give adequate consideration to the child's vulnerability because of his health complications which were a material factor in the assessment of where the best interests lie. The FtT's approach was flawed to the extent that it concluded that medical treatment was available should it be needed [37], which failed to encompass a holistic view of the best interests of the child which in the first instance ought to have considered that it would not be in his best interests to become ill from the high levels of pollution. Further there was no adequate assessment of the feasibility of living outside of Ulaanbaatar.
8. There is a material error in law and the decision and reasons is set aside.

### **Re making the decision**

9. I decided to I go on to re make the decision and heard submissions. After submissions I decided that a medical report on the appellant's son's health and the impact of pollution thereon would assist. I issued directions accordingly for the report to be filed and served on the UT by 12<sup>th</sup> July 2019. I have not received any medical report nor explanation for why it is not forthcoming. Instead I was provided with written "post hearing" submissions which simply repeat what was submitted at the hearing. I make my decision in the absence of further medical evidence.
10. On the evidence before the FtT I am satisfied that the assessment of where the best interests of the child lie failed to take into account that in returning to Ulaanbaatar even for a short period of time, the level of pollution; the highest in the world, would have a significant impact on the child's health and kidney condition. The evidence was accepted by the FtT and was not disputed by the respondent. There is a link as between environmental pollution and kidney diseases as evidenced in the article "Environmental pollution and kidney disease" (A/B). At page 47 (A/B) it is reported that "Pneumonia is now the second leading cause of death for children under five in Mongolia. In Ulaanbaatar respiratory infections have increased at a rate of 270% over the last 10 years and children living in the city have a 40% lower lung function than those living in rural areas. "At page 48 it stated that UNICEF warned that a "child health crisis" was looming in Mongolia. There was no consideration by the FtT of what "in the short term" could mean and given the high pollution it would seem reasonable that the impact of the pollution would be immediate. I find that the child risks an immediate deterioration in his health, which is already vulnerable, on return. The appellant has no links elsewhere in Mongolia where she has not lived for 15 years. The appellant's child has a particular disease which is currently stable and requires monitoring to check the

growth of the kidneys and any subsequent dilation, which at present takes place at 6 monthly intervals. The medical report dated 22.10.2018 states "I explained to parents the importance of surveillance ultrasound in order to monitor his kidney growth and any subsequent dilation." On return to a such an extremely polluted environment it is likely that his health would deteriorate and he would require treatment. It cannot be found in those circumstances that his best interests lie in returning with his mother to Ulaanbaatar even of for a short period of time. The appellant has lived in the UK for some 15 years and her sister has settled status in the UK. The child, now 3 years of age, was born in the UK. The appellant has not lived or worked in Mongolia for years and her family live in a two bedroomed flat where there are 6 people already living and accordingly the conditions would cramped and unsuitable.

11. In addition the appellant's biological father is resident in the UK; his status is precarious but he has had lawful leave and is awaiting a decision from the respondent. The child has a relationship with both him and his children from a new relationship. Those family relationships would be severed in the event of return to Mongolia. All of these factors lead me to conclude that the child's best interests, which are a primary consideration, are to remain in the UK with the appellant.
12. As to the appellant's former partner I find that the evidence fails to show any real risk to her of further abuse given that it was not know where he was living in Mongolia. However, I find that he was charged with assault in December 2015 and it was not disputed that he had been contacting her, which indicates that he may attempt to make contact in Mongolia.
13. Having regard to all the circumstances I am satisfied that there would be very significant obstacles to integration in Mongolia for the appellant and her child. The Immigration rules under paragraph 276ADE are met.
14. For the same reasons I am satisfied that there are compelling circumstances such that Article 8 ECHR is engaged outside of the Rules. The appellant and her child have established family life in the UK. The child was born here and the appellant has resided for a significant period of time. There would be an interference to the health and wellbeing of the child's family /private life. The decision is in accordance with the law as paragraph 276ADE is met. In terms of proportionality the best interests of the child are a primary consideration. The appellant has the support of her sister and the child's father who is lawfully resident in the UK and he has contact with his son. There are no countervailing reasons why such interest should not be followed or displaced (**ZH** (Tanzania)). The appellant is not reliant on public funds. The public interest in immigration control fails to outweigh the private interests of the appellant's child. I have taken into account that the precarious nature of private life carries little weight (section 117B(5)) but conclude that the interests of the appellant and her child outweigh any public interest.

## **Decision**

15. In remaking the decision I allow the appeal on human rights grounds.

Signed

Date 18.7.2019

G A Black  
Deputy Upper Tribunal Judge G A Black