Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19074/2018

THE IMMIGRATION ACTS

Heard at Glasgow Upper Tribunal	**Determination & Reasons Promulgated**
On 30 May 2019	On 13 June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MRS V B
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Winter, Counsel instructed by Katani & Co
For the Respondent: Mr A Govan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of India whose appeal was dismissed by First-Tier Tribunal Judge Clapham in a decision promulgated on 23 January 2019. Grounds of appeal were lodged and permission to appeal was granted by First-Tier Tribunal Judge Hollingworth in a decision dated 13 March 2019. The Secretary of State responded to the grounds of appeal under Rule 24 and thus the appeal came before me on the above date.

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2. Mr Winter, Counsel for the appellant, relied on his grounds. The appellant relied on Section 117B(6) of the 2002 Act as her daughter had lived in the UK for more than seven years. It was said in the grounds that the Judge erred in law when assessing whether it was reasonable for the daughter to leave the UK. Although the Judge had referred to the psychological report of Dr Jack Boyle, the Judge had failed to make any or had failed to make an adequate assessment of the report when assessing whether it was reasonable for the child to leave the UK. Reference was made to well-known case law. It was true that the Judge had referred to the report from Dr Boyle (paragraph 23 of the decision) but the Judge had failed to deal with Dr Boyle's reasoned findings and the Judge did not say why his view should be discounted. Given the report of Dr Boyle it was unclear why the Judge had made the findings he did make. The decision should be set aside because there was an error in law in failing to make adequate findings and the appeal should either be remitted to the First-Tier Tribunal or retained in the Upper Tribunal for a fresh decision.

3. For the Home Office Mr Govan relied on his Rule 24 notice. The Judge had applied anxious scrutiny and produced a lengthy and detailed analysis of the appellant's appeal, making carefully weighted and balanced findings that were reasonable and soundly argued in all respects. Despite being a qualifying child the Judge had found that taking into account the fabric of the child's life he considered that in the long-term adjustment would be possible and it was reasonable in circumstances where the parents had no right to remain to expect the child to follow them to India.

4. Having heard arguments for both parties I reserved my decision.

Conclusions

5. Section 117B of the Nationality, Immigration and Asylum Act 2002 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 United Kingdom. It is not disputed that this is the test the Judge applied and the criticism of the Judge is that he failed to make an adequate assessment of Dr Jack Boyle's report in assessing the test of reasonableness.

6. As the Judge put it (paragraph 23) the question that had to be answered was whether it was reasonable to expect the child [J] to leave the United Kingdom. The Judge went on to say that there was a psychology report from Dr Jack Boyle who noted there were no grounds for assuming that [J] could or would make a positive adjustment if she were returned to India. He said that it would, all things considered, be unreasonable and in [J]'s worst interests to leave an environment where she feels safe and secure. The Judge noted that Dr Boyle said the relocation for [J] would be unwelcomed, resisted and in all likelihood, compromise her adjustment. She would not be "returning" to India because she had never lived there. She was born here. She speaks no language other than English and inevitably her values were the same as those of other Scottish children of her age and gender. The Judge notes Dr Boyle saying that [J] was socially, psychologically and culturally a Scottish child who was indistinguishable

from her peers. It is quite clear that the Judge, when he went on to make his findings, had the findings of Dr Boyle in mind as they were so fully set out in paragraph 23. The Judge went on to note that he had considerable sympathy for the position of the child who should not of course be punished for whatever her parents had done or had not done in relation to their immigration history. The Judge noted that the child's parents spoke the relevant languages. There would appear to be family members in India who would be able to provide social and emotional support.

7. In paragraph 26 the Judge noted that there was no doubt that the child was not only doing well at school but had involvement in a number of activities outside it. The Judge suggested however that there would be no good reason why the child could not be enrolled for lessons outside school in India. The best interests of the child were a broad notion and the Judge went on to recognise that her removal to India would be challenging (paragraph 27). I note that challenging was the word used by Dr Boyle on page 24 of his report – a further indication that the judge did engage with the detail of the report and not simply repeat its terms. There was, however, no reason why the parents cannot relocate to India. The Judge noted that many families move from one country to another. The Judge said (paragraph 27) it appeared to him that this child was at an age where, with the support of her parents, she would be able to adapt. The Judge went on to refer to ***KO (Nigeria)*** and considered that in the long-term adjustment would be possible and it was reasonable in the circumstances where the parents had no right to remain here to expect the child to follow them to India.

8. In my view the Judge gave clear and coherent reasons why it was reasonable for the child to be returned to India. The criticism of the Judge is really that he did not engage with all of the findings of Dr Boyle; having set out what Dr Boyle said in paragraph 23 he did not engage further with the terms of that report. However, it seems to me that it is tolerably clear that the Judge, in making his careful findings, has taken Dr Boyle's observations into account before going on to give his own valid reasons why the appeal should be dismissed.

9. It therefore seems to me that the grounds of appeal express disagreement with the decision of Judge Clapham but go no further than that and do not disclose any material error in law. The Judge made findings that he was entitled to make on the evidence presented to him. As such there was no error of law in the Judge's decision which must stand.

Notice of Decision

10. The making of the decision of the First-Tier Tribunal did not involve the making of an error on a point of law.

11. I do not set aside the decision.

12. I shall continue the anonymity order.

Signed *JG Macdonald* Date 11th June 2019

J G Macdonald
Deputy Upper Tribunal Judge