



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000536

First-tier Tribunal No: HU/50225/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6 June 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE G BLACK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

Respondent

GCV

(ANONYMITY ORDER MADE)

Representation:

For the Appellant:

Mr E TERRELL (Home office presenting officer)

For the Respondent:

Ms N BRAGANZA KC (Instructed by Herrington Carmichael LLP)

Heard at Field House on 23 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant (*and/or any member of her family, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an error of law hearing. At the start of the hearing I made an anonymity order. The Appellant in this matter is the Secretary of State. I shall refer to the parties as the Secretary of State (“SSHD”) and to the respondent as “the Claimant”.
2. The Claimant, born on 7.9.1980 is a citizen of Philippines. On 22.12.2019 she was granted leave to enter as a domestic worker with a family with whom she had been employed as a live in nanny/housekeeper since 2014. That leave expired on 22.6.2020. In December 2019 the family and the Claimant moved to the UK from Hong Kong following a serious mental illness relapse of the mother of the family (LC) and it was decided that in patient treatment in the UK would be a preferable option. The Claimant is the primary carer for the three children aged 3, 9, and 11 years (as at the date of application). The Claimant developed a very close relationship with the youngest AC and has developed a very close relationship with LC who is dependent on her. The SSHD refused the application because the Claimant did not have “parental responsibility” and considered that the decision was compliant with section 55 2009 Act.
3. The First- tier Tribunal (FTJ Swaney)(“FTT”) allowed the human rights appeal in a decision promulgated on 16 January 2023. She found that there was family life as between the Claimant and the youngest child of the family (AC) and that the provisions under section 117B(6) 2002 Act (as amended), were met, namely that there was a genuine and subsisting parental relationship with a British citizen child. The SSHD did not attend for the hearing before the FTT.

Grounds of appeal

4. The SSHD appealed on the grounds that the FTT erred in law by making a material misdirection of law (Ground 1) in concluding that there was a genuine parental relationship [22] and a breach of family life. Ground 2 argued that similarly the FTT’s assessment of private life was flawed as the private life was established on a precarious basis and there was no evidence to show that there would be very significant obstacles to the appellant’s integration in Philippines.

Permission to appeal

5. Permission to appeal was granted by FTJ Parkes who observed that the Claimant entered the UK as a domestic worker in 2019 with leave until June 2020, and as such there was no route settlement. The Claimant did not meet the Immigration Rules and with regard to Article 8 family life, given “the involvement of the parents it is difficult to see how the Appellant’s relationship with the children could be characterised as parental “ and /or that the removal was disproportionate.

Rule 24 response and Skeleton argument

6. The Claimant provided a Rule 24 response and a skeleton argument (ASA). In short it was argued that the SSHD’s grounds failed to disclose any point of law and that the grounds were no more than a disagreement. The findings made by the FTT were case specific and reached having heard all of the evidence (Uddin v SSHD [2020] EXCA Civ 338). The SSHD failed to address the particular and exceptional circumstances in the appeal involving the serious mental ill health of

LC, as a result of which the close relationship had developed as between the Claimant and AC.

7. It was submitted that Ground 2 similarly amounted to a disagreement and/ or was in effect a perversity challenge, although this was not pleaded.
8. There was no Reply to the Rule 24 response from the SSHD.

The hearing

Submissions

9. At the hearing before me Mr Terrell confirmed that the SSHD was not seeking to pursue Ground 2 as to private life. There was no argument that the FTT was wrong to conclude that there was family life and that Article 8 was engaged. Ground 1 focused on the challenge to section 117B(6) and as to proportionality, to the extent that the FTT had erred in characterising the relationship as parental within the meaning of that section. The caselaw (R (on the application of RK) V SSHD (s.117B(6); "Parental relationship") IJR [2016] UKUT 00031 (IAC) and AB (Jamaica) [2019] EWCA Civ 661) supported the view that where a relationship existed between a carer and a child it could not amount to a parental relationship. Mr Terrell did not seek to challenge the FTT's findings made as to the existence of close relationships. Section 117B(6) could not be satisfied and accordingly the FTT ought to have gone on to make a full proportionality assessment.
10. Ms Braganza relied on her Rule 24 response and ASA. She submitted that Ground 1 failed to disclose any identifiable error in law. The only possible argument was a perversity challenge and the SSHD had not raised that in the grounds and permission had not been granted on that basis. The grounds had not identified the section 117B(6) issue, which was raised for the first time at this hearing.
11. The SSHD's submissions relied on the headnote for RK which was not an accurate reflection of the judgment. In short Ms Braganza submitted that it was the remit of the FTT to make findings of fact as to parental relationship on the evidence before her and that those findings were open to her to make on the evidence.

Discussion and conclusions

12. The decision of the FTT does not reveal any material error of law. I am entirely satisfied that Ground 1 as pursued by the SSHD, fails to identify any point of law that is capable of amounting an error let alone an arguable error of law. It is not specifically argued in the Grounds how the FTT erred in law. The Ground refers to a misdirection of law as to the findings of family life and the conclusion that there is parental relationship. As I highlighted at the hearing the grounds fail to specify particulars in terms of any error as to section 117B(6), which formed the basis of the arguments put by Mr Terrell at the hearing before me. I am satisfied that the FTT decided as a matter of fact that there was a parental relationship as between the Claimant and AC having assessed the evidence. This was the central issue that the FTT had to decide. I find no error in terms of the law or its application by the FTT. The SSHD does not seek to challenge the facts as found by the FTT or to argue that those facts were not open to her to make. The decision was thorough and comprehensive.

13. It is clear that the FTT carefully considered the oral and documentary evidence before her and made findings of fact, that are not challenged at all. The FTT found that there was family/private life engaged [18] [23] and a genuine parental relationship with AC [29][34]. The FTT did not accept that parental responsibility was a necessity for family life to exist [22]. The closeness of the relationship as between the Claimant and AC was not contested. The FTT found that the impact of removal on LC would be significant and negative [27]. The FTT concluded that section 117B(6) was satisfied [35].
14. The ground amounts to a generic argument as to the nature of a parental relationship without focusing on the particular evidence and exceptional circumstances of this case. The FTT was required to consider the particular facts of the case and on the evidence before her was perfectly entitled to reach the findings and conclusions. Whilst case law carries some weight in terms of general guidance, it is nevertheless clear that the FTT is tasked with assessing the evidence and making findings as to what amounts to a parental relationship having regard to the particular facts and individual circumstances of the case. The FTT was correct in her approach to Section 117(B)(6) and there was no necessity to carry out any further proportionality exercise.
15. The FTT clearly engaged with the exceptional circumstances of the appeal in particular the significant mental health issues of the mother. There was no need for the FTT to go on to consider proportionality given her conclusion that section 117B(6) was satisfied. However, if she had I am satisfied that any assessment would have lead to the same conclusion/outcome.

Notice of Decision

16. The grounds of appeal amount to a disagreement with the decision made and disclose no material error in law. The appeal is dismissed. The decision of the FTT shall stand.

G A Black

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

31.5.2023