

**Upper Tribunal  
(Immigration and Asylum  
Chamber)**  
IA/38984/2014



Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 20<sup>th</sup> May 2015**

**Decision & Reasons  
Promulgated  
On 5<sup>th</sup> June 2015**

**Before**

**UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

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

Appellant

**and**

**MRS N A C  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr M Diwnycz, Home Office Presenting Officer  
For the Respondent: Mr M Janjua, of Janjua & Associates

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Secretary of State with permission against the decision of a First-tier Tribunal Panel (Judge Saffer/Judge Monaghan) promulgated on 2<sup>nd</sup> January 2015 in which it allowed the Respondent's appeal against the Secretary of State's decision to refuse her leave to remain in the UK on the basis of her Article 8 private/family life.
2. For the sake of continuity and clarity I will in this determination, refer to Mrs N A C as "the Appellant" and the Secretary of State as "the Respondent" which reflects their respective positions before the FtT.

3. The FtT made an anonymity direction in this appeal and I see no reason to disturb that direction. It therefore continues for the purpose of these proceedings under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

### **Background**

4. The Appellant born 1<sup>st</sup> May 1954 is a citizen of Pakistan. She entered the United Kingdom as a visitor on 25<sup>th</sup> September 2013 in order to see her son M now living in the UK. M is the father of A born 24<sup>th</sup> March 2012. A is a British citizen. Her mother is currently in prison and although A's mother and father are neither married nor living together, a Residence Order has been made in favour of A's father. A's grandmother is currently the principle carer for A.
5. When the Appellant entered the United Kingdom on 25<sup>th</sup> September 2013 part of the purpose of her visit was to enable a package to be presented to Social Services whereby she and her son could present a shared cared arrangement which would mean that A could remain with her birth family. The Appellant underwent a Social Services assessment and on 2<sup>nd</sup> October 2013 a Residence Order was made in favour of A's father with a Supervision Order in favour of Leeds City Council for a period of one year.
6. The Appellant remained in the United Kingdom caring for A until she left on 26<sup>th</sup> December 2013 prior to the expiry of her visa.
7. She re-entered on 8<sup>th</sup> February 2014 with a visa valid to 28<sup>th</sup> July 2014 and again this was with the purpose of caring for A.
8. On 24<sup>th</sup> July 2014 shortly before the expiry of her extant leave the Appellant applied for leave to remain outside the Immigration Rules. On 30<sup>th</sup> September 2014 the Respondent refused the application and the Appellant's subsequent appeal came before the First-tier Tribunal on 15<sup>th</sup> December 2014.
9. The FtT having heard evidence made findings that the best interest of A would be served by her being looked after by the Appellant, at this point in time. A had formed a close bond with her grandmother. Further A's father was enabled to work as a taxi driver on night shift and thus provide financially for A.
10. If the Appellant were removed, A's father would not be able to work unsocial hours and this would result in a likelihood of recourse to public funds. The FtT accordingly found that whilst there is a need for immigration control it did not outweigh the best interests of the child in this particular case and it would therefore be disproportionate to require the Appellant to leave the UK.

### **The Grounds of Appeal**

11. There are three strands to the grounds seeking permission. They can be summarised as follows:

- (i) It is said that the FtT misdirected itself in law on this basis. It was accepted by the Secretary of State that Social Services found the Appellant to be suitable as a carer for A, but there were no reasons advanced in the Tribunal's determination showing why the child's care could not reasonably be provided by other channels e.g. child minder, nanny or state support.
- (ii) Added to this it is argued that the FtT's approach was not structured in accordance with the guidance given by the *Court of Appeal in AE (Algeria) v SSHD* [2014] EWCA Civ 653 because the Appellant was present in the United Kingdom as a visitor and could hold no legitimate expectation of remaining outside the terms of her visa. Thus the FtT failed to lawfully engage with the possibility of the A's father accessing other channels of support.

This theme also appears under the heading Article 8 and adds a rider that Article 8 is not a general dispensing power and does not confer a choice upon the Appellant or her son as to who care for A.

- (iii) Section 117 - It is claimed that although the FtT state that regard has been had to Section 117B of the Nationality, Immigration and Asylum Act 2002, it refers only to a singular sub-section. The submission on behalf of the Secretary of State is that it is incumbent upon the Tribunal to have regard to *all* (the Secretary of State's emphasis) of the public interest factors contained in Section 117, rather than artificially separating them.

### **The Hearing before the Upper Tribunal**

12. Mr Diwnycz who appeared on behalf of the Respondent essentially relied on the grounds seeking permission. Mr Janjua was equally brief and relied upon advancing those matters which had been put before the FtT and which are set out in the grounds.

### **Error of Law**

13. The grounds essentially take issue with and revolve around one point. It is this; the FtT erred by placing too much weight on its finding that the best interests of A would be served by having her grandmother remain in the United Kingdom as her carer. It is said there was insufficient reasoning (and therefore weight) advanced on why care for A could not reasonably be provided by other channels.

14. I reject that argument. The FtT in a carefully set out decision considered all the relevant documentation before it, including crucially, a detailed Social Services assessment. The Panel reminded itself that the Appellant could not meet the requirements of the Immigration Rules but formed the view that in its judgment the best interests of A would be served by being cared

for by her grandmother, the Appellant. Other avenues were discounted. They acknowledged that if the Appellant were removed, A's father would have to give up work which would mean public benefits being expended.

15. Having properly directed itself that the Appellant could not meet the requirements of the Immigration Rules, the Panel noted that this was a case where they would need to consider Article 8 ECHR outside the Rules in accordance with the principles set out in *Gulshan*.
16. The Panel reminded itself of the following; Removal would normally be lawful and would be for the legitimate aim of retaining the integrity of immigration control by only allowing those to be here who comply with the Immigration Rules. The real issue in this case is whether it would be proportionate to require the Appellant to leave the United Kingdom.
17. So far as the Panel's reasoning is concerned I can discern no error of law. The Panel has explained why it has strayed outside the Immigration Rules and considered Article 8 with specific reference to *Gulshan*. The grounds amount to a disagreement with the facts found by the Panel; findings which were open to them on the available evidence. There is no reason to suppose that these findings are perverse.

### **Section 117B**

18. The SSHD submits it is incumbent upon the FtT to have regard to *all* (the SSHD's emphasis) of the public interest factors contained in Section 117, rather than artificially separating them. That is as far as this submission goes. No particulars were given before me why it is said that this "failure" amounts to legal error. The Panel applied the relevant part of Section 117 to the facts they found on the evidence before them. Nothing has been put before me to show that somehow or other, the setting out of Section 117 fully would alter the outcome of this appeal.
19. For the foregoing reasons the decision of the FtT discloses no error of law. The decision therefore stands.

### **Decision**

20. The appeal of the Secretary of State is dismissed.

Direction regarding anonymity - Tribunal Procedure (Upper Tribunal) Rules 2008 Rule 14

**The appellant is granted anonymity throughout these proceedings, unless and until the Tribunal directs otherwise. No report of these proceedings shall directly or indirectly identify her or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of Court proceedings.**

**Signature**

Judge of the Upper Tribunal

**Dated**

