



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

Appeal Number: AA075572015

THE IMMIGRATION ACTS

**Heard at City Centre Tower, Birmingham
On 25th April 2016**

**Decision & Reasons
Promulgated
On 24th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**AI
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Reza of Sultan Lloyd

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Pakistan born on [] 1988. He first arrived in the UK on 6th May 2011 when he was given leave to enter as a Tier 4 (Student) Migrant. On 25th April 2012 that leave was curtailed as

the Respondent had information that the Appellant had ceased his studies. On 11th September 2013 the Appellant applied for asylum. That application was refused for the reasons set out in the Respondent's letter of 22nd April 2015. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Asjad (the Judge) sitting at Birmingham on 20th August 2015. She decided to dismiss the appeal for the reasons given in her Decision dated 14th September 2015. The Appellant sought leave to appeal that decision, and on 9th October 2015 such permission was granted limited to the Article 8, ECHR dismissal.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge had dismissed the appeal on Article 8, ECHR grounds because she found that the Appellant did not have a family life with his claimed partner SA but that he did have such a life with their two children, namely AI born on 8th May 2013 and AI born on 27th April 2014. The Appellant also had a private life in the UK. The Judge was satisfied that the decision of the Respondent amounted to an interference with that private and family life to such a degree of gravity as to engage the Appellant's Article 8 rights. However, she also found that such interference was proportionate.
4. At the hearing, Mr Reza referred to his Skeleton Argument and submitted that the Judge had erred in law in coming to that conclusion. The Judge had failed to take into account the best interests of the children and had not treated them as a primary consideration. The Judge had not referred to the duty imposed by Section 55, Borders, Citizenship and Immigration Act 2009. The Judge's omission was particularly relevant as the children were British citizens. The Judge had further erred by not considering the position of the Appellant's children in the light of the decision in **Zambrano**.
5. In reply, Mr Diwnycz referred to the Rule 24 response and argued that there were no such errors of law. The Judge had not stated that he had considered the best interests of the children, but from what he wrote, starting at paragraph 68 of the Decision it is clear that she had had them uppermost in her mind when making her decision. The Judge had come to a conclusion about proportionality which was one open to her upon her findings of credibility.
6. I find no error of law in the decision of the Judge which I therefore do not set aside. The grant of leave to appeal is restricted to the Appellant's Article 8, ECHR decision and in particular the assessment of proportionality. The Judge found that the Appellant had a family life with his children, and that he had a private life in the UK. It appears that there was little evidence before the Judge of the Appellant's private life, and earlier at paragraph 60 of the Decision when considering Appendix FM of HC 395, the Judge found that there was "very little evidence to show that

he (the Appellant) is taking or intends to take an active role in the children's upbringing. Indeed, the Judge had doubts as to whether the Appellant lived in the same household as his claimed partner and their children.

7. It is unfortunate that the Judge did not specifically refer to the best interests of the children and the obligations imposed by Section 55 of the 2009 Act. However, it is apparent that the Judge carried out the balancing exercise necessary for any assessment of proportionality and it is apparent from what the Judge wrote at paragraph 72 of the Decision that in doing so he took into account the interests of the children. In this paragraph the Judge stated that the children could not be expected to leave the UK, and therefore the decision in **Zambrano** has no application.
8. Again at paragraph 72 of the Decision the Judge explained the considerable weight to be attached to the public interest, and she was entitled to conclude that such factors outweighed the personal circumstances of the Appellant even taking account of the interests of the children.
9. For these reasons, I find no error of law in the decision of the Judge.

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.

I do not set aside the decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

11. The First-tier Tribunal made an order for anonymity which I continue for the reasons given by the First-tier Judge in her Decision.

Signed

Dated 24th May 2016

Deputy Upper Tribunal Judge Renton