



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: IA/30976/2014**

**THE IMMIGRATION ACTS**

**Heard at Manchester Piccadilly  
On 23 March 2016**

**Decision & Reasons Promulgated  
On 12 May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**IMRAN ALI**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr G Brown counsel instructed by Arshad & Co Solicitors

For the Respondent: Ms Johnstone Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
3. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Manuel promulgated on 16 February 2015 which dismissed the Appellant's appeal on all grounds.

#### Background

4. The Appellant was born on 23 April 1978 and is a national of Pakistan.
5. The Appellant entered the UK on 5 April 2009 with entry clearance as the dependent partner of a Tier 1 Migrant namely his spouse Anshad Rafique Khan. His wife and two children entered the UK at the same time and at the date of hearing the children were aged 11 (DOB 16.1.2003) and 12 (DOB 25.2.2002). Further leave was granted in that capacity until 19 May 2014.
6. The Appellants wife and two children were granted Indefinite Leave to Remain on 18.3.2014.
7. On 17 May 2014 the Appellant applied for leave to remain on the basis of his family and private life.
8. On 17 July 2014 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
9. The Appellant could not succeed under Appendix FM because he did not meet the requirements as he was a persistent offender; he could not benefit from EX.1 as his partner was not at the time of the decision settled in the UK and his children had not lived in the UK for 7 years at the date of the decision and there were no insurmountable obstacles to them relocating. He did not meet the private life requirements of 276ADE(1) and there were no circumstances warranting a grant of leave outside the Rules
10. In September 2014 the Appellant and his wife had a third child.

#### The Judge's Decision

11. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Manuel ("the Judge") dismissed the appeal against the Respondent's decision.
12. Grounds of appeal were lodged which argued that :

- (a) The Judges approach to section 117B of the 2002 Act was flawed in that she failed to demonstrate in her assessment that she had regard to the factors set out in the provision.
- (b) The Judge failed to take into account that the Appellants wife and children were British (paragraph 21)
- (c) The Judge attached a disproportionate weight to the offending of the Appellant.

13. On 17 April 2015 Designated Judge Campbell gave permission to appeal.

**Rule 24 Notice**

14. In a Rule 24 response the Respondent argued that the Judge directed herself accordingly; it was not raised at the hearing that the third child was a British citizen and even if it had been it would not be unreasonable for him to return to Pakistan with his parents; the Judge was not required to particularise the individual sections of section 117B of the 2002 Act; when read as a whole the decision takes into account the relationship between the Appellant and his children and whether it was reasonable for them to return to Pakistan.

15. At the hearing I heard submissions from Mr Brown on behalf of the Appellant that:

- (a) There is no definition of 'persistent offender' in the Rules and therefore it cannot simply mean that the applicant has committed more than one offence. The Judge made no finding of the basis on which she determined that the Appellant was a persistent offender.
- (b) At the time of the hearing the third child was a 'qualifying child' for the purpose of section 117B(1)6 in that she was a British citizen by virtue of the mothers settled status. This provision was not engaged with.

16. On behalf of the Respondent Ms Johnstone submitted that:

- (a) The Judge made clear findings about criminality in paragraph 9 of the decision.
- (b) The Judge did not ignore the position of the third child but she does consider that in paragraph 27.

### **Finding on Material Error**

17. Having heard those submissions, I reached the conclusion that the Tribunal made no errors of law that were material to the outcome of the decision to dismiss the Appellant's appeal against a refusal of leave to remain on the basis of family and private life.
18. In relation to the submission that the Judge erred in her assessment of whether the Appellant, who had two sets of offences identified at paragraph 7 of the decision, was a persistent offender I am satisfied that the Judge was entitled to give the words their normal meaning and conclude that he was a persistent offender in that he had committed more than one offence. This view has since the date of hearing been reinforced by the decision in Chege ("is a persistent offender") [2016] UKUT 00187 (IAC) that a persistent offender for the purpose of the Rules is someone who keeps breaking the law. I note the argument in the grounds that the Judge gave too much weight to the offending but that was a matter for her and she gives clear well reasoned explanations for the conclusions she reached about the offending at paragraphs 15-23 of her decision.
19. I am also satisfied that there is no merit in the argument that the Judge gave too much weight to the Appellants offending is without merit. The assessment of weight is a matter for her and therefore she was entitled to note that the second set of offences (which were of a similar nature) were committed within 14 months of his last conviction and themselves involved the breach of a court order (driving while disqualified).
20. I have considered the argument that the Judge failed to take into account that the third child was a qualifying child for the purpose of paragraph 117(1)6. I have read the decision carefully together with the record of proceedings and the bundle of documents. I note that there was no skeleton argument before the Judge. While I accept that this argument is advanced in the grounds of appeal drafted by Ms Pickering who represented the Appellant before the First-tier Tribunal there is nothing to show that it was an argument advanced before the Judge: if the case is to be argued differently now the Judge is not in error.

21. However even if I were to accept that the Judge should have accepted that the third child was automatically entitled to British citizenship as the child of a person with settled status the Judge was still obliged to consider whether it was 'reasonable' for her to return to Pakistan with her family under section 117(1)6: the fact of her British citizenship alone was not determinative of whether it was reasonable for a British Citizen child to leave the UK . The Judge was required to carry out a fact specific analysis against a background history which included the fact that neither at the time of the application nor at the time of hearing had any of the children been in the UK for 7 years in determining whether it was reasonable for this family to return to Pakistan and this is what she did at paragraphs 24-37 of her decision stating explicitly that it was reasonable for the family to return together to Pakistan .

22. Having decided that section 117B(1)6 did not apply the Judge was required to consider the other provisions of s117B having acknowledged this herself in her decision earlier. I am satisfied that the failure of the Judge to make specific reference to the other provisions of section 117B has not been identified as making a difference to the outcome in this case particularly given that an appellant can obtain no positive right to a grant of leave to remain from either s117B (2) or (3), whatever the degree of his fluency in English, or the strength of his financial resources.

23. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

## **CONCLUSION**

**24. I therefore found that no errors of law have been established and that the Judge's determination should stand.**

## **DECISION**

**25. The appeal is dismissed.**

Signed

Date 9.5.2016

Deputy Upper Tribunal Judge Birrell