



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

Appeal Number: IA/35286/2015

THE IMMIGRATION ACTS

**Heard at FIELD HOUSE
On 19th July 2016**

**Decisions and
Promulgated
On 22nd July 2016**

Reasons

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL
G A BLACK**

Between

**MRS FOZIA RANI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim (Counsel instructed by Malik law)
For the Respondent: Ms J Isherwood (Home office presenting officer)

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is a material error of law in the determination promulgated by the First-tier

Tribunal (Judge Coleman) (“FTT”) on 7th January 2016 in which she dismissed the appeal on immigration and human rights grounds.

Background

2. There was no dispute as to the facts in this matter. The appellant came to the UK in 2011 and in 2013 she married Mr Quadrat, a citizen of Pakistan who at that time had been granted discretionary leave until 14.4.2018. The respondent refused her application for further leave to remain under Appendix FM and paragraph 276 ADE on the grounds that the sponsor was not settled in the UK and there were no exceptional circumstances. The appellant and the sponsor had a child born on [] 2014. The respondent was specifically requested to consider section 55 of the 2009 Act as to the best interest of the child. This was dealt with in a further refusal letter and the respondent maintained the decision. The appellant was an overstayer and the child was not a British citizen nor a “qualified” child. The sponsor was not settled in the UK and had not got sole responsibility for the child. EX.1 did not apply. The family could return to Pakistan to live there as a family unit.
3. The FTT considered the appeal on human rights grounds [11], it having been conceded that the appellant could not meet the Rules [10]. The FTT found that there was family life in the UK and that the first two tests under **Razgar** were answered in the affirmative [15]. The FTT accepted that the sponsor would not return to Pakistan as he wished to remain in the UK in order to obtain settlement, and that this amounted to an interference with the family life. The FTT considered that the crux of the matter was whether or not it would be fair to expect the appellant and her daughter to return to Pakistan while her husband remained in the UK until he had obtained settlement, and for them to make an application out of country [16]. The FTT concluded that the interference was proportionate in accordance with the public interest in immigration control. The FTT took into account that the marriage took place when the parties were in a precarious position, and chose to have a child. They both had family living in Pakistan and there was no reason why they could not obtain employment there [17]. There was no evidence that the appellant met the financial requirements of the Rules. There were no real obstacles to family life in Pakistan. The sponsor was not settled in the UK and that it was a choice on his part as to whether or not he returned to Pakistan with his wife and child.
4. The appellant argued in grounds of application for permission that the FTT erred in law by failing to consider section 55 as to where the best interest of the child lie in the proportionality assessment.
5. Permission was granted by FTJ Hollingworth on the grounds that no specific reference was made to section 55 and whilst the FTT did consider whether or not it was fair to expect the family to return to Pakistan, this was not the same as a consideration of section 55 obligations.

Submissions

6. Mr Karim expanded on the grounds and argued that the FTT erred in failing to consider the impact on the child of a separation from either parent. It had already been accepted that it would not be disproportionate to remove the sponsor in the light of his grant of discretionary leave. He could apply for ILR and his child would then be able to register as British citizen. There had been no consideration of the circumstances in which discretionary leave (DL) had been granted. The FTT failed to consider section 117B which focused on unlawful status rather than precarious status re family life. The test where a child is concerned is reasonableness. The failure to consider section 55 was a material error and there was no consideration of any substance of the position of the child.
7. Ms Isherwood advised that the sponsor had claimed asylum in 2000 which was refused in 2002 and that he appeared to have been granted DL under the legacy provisions. She submitted that there was no material error of law. She relied on **EV (Philippines) v SSHD[2014] EWCA Civ 874** and **AJ(India)[2011] EWCA Civ 1191**. It was a choice on the part of the sponsor not to leave the UK. The appellant did not meet the Immigration Rules. It was accepted that no specific reference was made to section 55 but the FTT had considered it in substance at [3/4, 8,10,12,14,15,16-18]. There was no evidence adduced to show how the separation would impact on the child.

Discussion and conclusion

8. I find that there was no material error of law by the FTT. I am satisfied that taken as a whole the FTT did consider the welfare of the child under section 55 and that there was specific reference to the same at [12] in recording the submissions made by the Respondent and by the appellant [13]. The Respondent submitted that there would be no breach because the family would return as a unit and that the child was young enough to adapt to life in Pakistan and to integrate with the help of her parents. The FTT was aware that the interests of the child had been specifically raised for reconsideration by the Respondent [4] and set out the reasons for refusal (ii) in that context. The FTT was aware that the child was 2 years of age and in the decision her interests were considered in alongside those of the appellant. The FTT engaged in a full assessment of the family circumstances both in the UK and in Pakistan and found no evidence that would render the interference disproportionate.
9. The FTT made it clear that the main issue was whether or not it would be fair to expect the appellant and her child to return to Pakistan without the sponsor. The FTT had regard to the failure to meet the Immigration Rules,

the decision to enter into a marriage and have a child at a time when the parties immigration status was temporary. Essentially, the FTT whilst sympathetic to the family situation concluded that the issue was ultimately a matter of choice for the sponsor and that there were no insurmountable obstacles to family life continuing in Pakistan where there were strong ties and the potential for employment. There was no evidence adduced before the FTT and none has been relied on before me that would lead me to conclude that the best interests of the child lie by remaining with both or one parent(s) in the UK. The decision as to proportionality is sound and properly reasoned. The sponsor does not have the required settled status and the child is neither a British citizen nor qualifying child. The failure to consider section 117B is not in my view material to the outcome of the decision and in any event was not raised in the grounds of application.

Decision

10. There is no material error of law disclosed in the decision, which shall stand.

The appellant's appeal is dismissed.

NO ANONYMITY ORDER

Signed

Date 21.7.2016

GA BLACK

Deputy Judge of the Upper Tribunal

NO FEE AWARD

Signed

Date 21.7.2016

GA BLACK

Deputy Judge of the Upper Tribunal