Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13194/2015

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 23 November 2017	**On 11 December 2017**

Before

UPPER TRIBUNAL JUDGE LANE

Between

RUKHSANA BIBI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss Mair, instructed by Prolegis Solicitors LLP
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Rukhsana Bibi, was born on 10 July 1985 and is a female citizen of Pakistan. She appealed to the First-tier Tribunal (Judge Chana) against a decision of the respondent dated 26 November 2015 to refuse her further leave to remain as the spouse of a person settled in the United Kingdom. In addition to refusing the application under paragraph 285 of HC 395 (as amended), the respondent also refused it under paragraph 322(1A) because the respondent considered that the appellant had submitted a false document in connection with a previous application for leave. The First-tier Tribunal, in a decision promulgated on 27 February 2017,

© CROWN COPYRIGHT 2017

dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant is married to the sponsor, Mr Ditta. Mr Ditta has been married previously. In connection with an application made by the appellant to remain in the United Kingdom (she had entered as a fiancée) a divorce decree absolute dated 5 January 2011 had been submitted to the Secretary of State. All parties now accept that that decree absolute was a false document. Indeed, Mr Ditta had not been divorced as at that date. He was subsequently divorced from his first wife and a further decree absolute (this time, the parties agree, a genuine one) had been filed in support of the instant application and is dated 2013. Judge Chana determined the appeal on human rights grounds only but she took account of the fact that the appellant had been regarded by the respondent as unsuitable under the Immigration Rules and found also that the allegation that the appellant had relied in a previous application on a false document had been proved by the Secretary of State. Those findings clearly had an impact on the judge's assessment of the public interest proportionality assessment for Article 8 ECHR. There are three children of the appellant and sponsor, all under the age of 10 years. The children are British citizens. Notwithstanding their nationality, the judge found that it would be proportionate for the appellant to be removed finding that the children were very young and "therefore adaptable" and could leave the United Kingdom with the appellant and sponsor and enjoy family life together abroad.

3. There is a problem with the judge's analysis. As the grounds assert, she had made no reference to Section 117B(6) of the 2002 Act (as amended):

> (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
>
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
>
> (b) it would not be reasonable to expect the child to leave the United Kingdom.

4. In addition, the judge failed to consider the respondent's current policy in respect of British children: see of *SF and others* (Guidance, post-2014 Act) Albania [2017] UKUT 120(IAC)):

> *Even in the absence of a "not in accordance with the law" ground of appeal, the Tribunal ought to take the Secretary of State's guidance into account if it points clearly to a particular outcome in the instant case. Only in that way can consistency be obtained between those cases that do, and those cases that do not, come before the Tribunal.*

5. In the circumstances and in particular given the British nationality of the children, the judge's failure to have regard to Section 117B(6) has vitiated her decision. I therefore set it aside.

6. Fresh evidence produced by the appellant shows that the solicitor who had acted for her husband and had produced the fraudulent decree absolute has been investigated by the Solicitors Regulation Authority and has been prosecuted for fraudulent

practices. There was evidence also that the police have not only refrained from bringing any prosecution against the sponsor for having colluded with the solicitor's fraudulent practices but have stated that the sponsor and appellant are themselves likely to have been victims in the fraud and did not know when they obtained it and subsequently sought to rely upon it in the immigration application that the decree absolute was a false document. I am aware also that no attempt had been made to rely upon the false document in the application which is the subject of the present appeal; there is, on the other hand, evidence to show that the genuine decree absolute of 2013 was filed in support of the application. Mrs Pettersen, for the respondent, did not seek to persuade me that the circumstances in this case were such that the public interest required the removal of this appellant and her separation from children with whom she has a genuine and subsisting relationship and who are British citizens. Accordingly, I remake the decision allowing it on human rights grounds.

Notice of Decision

7. The decision of the First-tier Tribunal which was promulgated on 27 February 2017 is set aside. I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 26 November 2015 is allowed on human rights grounds (Article 8 ECHR).

8. No anonymity direction is made.

Signed Date 1 December 2017

Upper Tribunal Judge Lane