



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/14725/2016

THE IMMIGRATION ACTS

Heard at Birmingham  
On 11 August 2017

Decision & Reasons Promulgated  
On 21 August 2017

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MEHWISH SAIF  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Barr, instructed by Jasvir Jutla & Co Solicitors  
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mehwish Saif, was born on 5 September 1987 and is a female citizen of Pakistan. The appellant cohabits with an Afghan national who has indefinite leave to remain in the United Kingdom. The couple's child was born in the United Kingdom

and, in consequence of his father's settled status, is a British citizen. Judge Parkes (who dismissed the appellant's appeal against the refusal of her human rights claim) found that whilst "nationality was a weighty consideration it is not a determinative factor. The question clearly has to be what the benefits of British citizenship is the appellant's son enjoying that he would be deprived of on that there is no evidence and so no apparent loss to him from living in Pakistan" [22]. The judge concluded at [25] that the appellant's failure to observe the immigration laws contributed to a powerful public interest in her removal. He found that the appellant could either leave the country with her son and apply for entry clearance from Pakistan or leave permanently with her child to live in Pakistan. If she chose the former option then there is "nothing in the evidence to suggest that would be an unreasonable burden". The judge found that the appellant was "not a victim of circumstances but has created the situation she finds herself in with the consequences set out above".

2. Before the Upper Tribunal, Mr Mills, for the respondent, told me that the Secretary of State agreed that the appeal should be allowed and that the decision should be remade allowing the appellant's appeal against the immigration decision. Mr Mills acknowledged (as had Judge Gibb, who granted permission to appeal) that, whilst the jurisprudence may have moved on from *Sanade and others* (British children - *Zambrano - Dereci*) [2012] UKUT 00048(IAC), the Secretary of State's directions to her officers maintained that it would not be in the public interest to remove a British child (and, by extension, his or her carer) from the European Union in cases which did not involve criminality. The decision of the Upper Tribunal in *SF (Guidance, post-2014 Act)* [2017] UKUT 120 (IAC) confirms that:

*"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."*

In the circumstances, Mr Mills submitted that Judge Parkes had erred in law by not allowing the appeal. I agree.

### **Notice of Decision**

The decision of the First-tier Tribunal which was promulgated on 4 April 2017 is set aside. None of the findings of fact shall stand. I have remade the decision. The appellant's appeal is allowed on human rights grounds (Article 8 ECHR).

No anonymity direction is made.

Signed

Date 18 August 2017

Upper Tribunal Judge Clive Lane