



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/25608/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 16 June 2017

**Decision & Reasons
Promulgated
On 05 July 2017**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A S

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr P Nath, Senior Home Office Presenting Officer
For the Respondent: Mr R Sharma, Counsel, instructed by Malik law Chambers
Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department (Appellant) against the decision of Judge of the First-tier Tribunal L K Gibbs (Ftj), promulgated on 21 November 2016, allowing the Respondent's appeal against the Appellant's refusal, dated 1 July 2015, of his human rights claim made on article 8 ECHR grounds.

Background

2. The Respondent is a national of the United States of America, date of birth 5 December 1999. In a statement dated 27 October 2016 the Respondent described his parent's relationship as "not good." They

fought on a daily basis and were, at times, violent and aggressive. The Respondent became depressed and traumatised by the whole experience. The situation was so bad that sometimes he had to sleep without food. He could not focus on his studies and did not want to leave school. He got on particularly badly with his mother and he saw very little of his father who worked in the evenings and at weekends as a taxi driver. At the hearing before the FtJ the Respondent explained that his father now lived in New York and his mother and younger sibling remained in California. The Respondent has a very close relationship with AS, his paternal aunt, and her husband RS, both of whom are British citizens residing in the UK. They would often visit him in the USA.

3. The FtJ found that there had been a pre-agreement between his parents and AS and RS to bring the Respondent to the UK. He entered the UK on 11 September 2014 as a visitor. Before his leave expired he made an application for leave to remain on the basis of his private and family life with AS and RS.

The Reasons for Refusal Letter

4. The Appellant noted that neither of the Respondent's parents lived in the UK. He could not therefore meet the immigration rules (Appendix FM) for leave to remain as a child. The application was also refused under paragraph 276ADE of the immigration rules in relation to the Respondent's private life. The Appellant then considered whether there were exceptional circumstances which, consistent with the right to respect for private and family life contained in article 8, might warrant a grant of leave to remain outside the immigration rules. The Appellant noted that the Respondent was studying towards his GCSEs and that he had established a private life through his visit visa. The Respondent however had no legitimate expectation that he would stay in the UK when he entered. It was considered to be in his best interests to remain with his parents, the most important people in his life, who would help him reintegrate back to life in America. He would have sufficient access to education in the USA.

The First-tier Tribunal decision

5. The FtJ did not have the assistance of a Presenting Officer at the hearing. The FtJ heard from the Respondent, RS and AS. The FtJ found the evidence from the witnesses credible. The FtJ accepted the Respondent's evidence regarding the problems in his parent's marriage and that they were now separated. The Respondent was happy in the UK, settled at home with his aunt, uncle and cousin, and was attending school. The FtJ accepted the Respondent's oral evidence that he wanted to remain in the UK because he does not want to live with his mother and could not live with his father because he worked nights. The FtJ found that the Respondent could not meet the requirements of paragraph 276 ADE, but was persuaded that it

was appropriate to consider the appeal outside of the immigration rules, applying *SSHD v SS (Congo) & Ors* [2015] EWCA Civ 387.

6. The Ftj noted the unchallenged evidence before her that the Respondent felt happy and settled in the UK and felt loved within his new family unit. The Ftj accepted the problems that the Respondent had in the USA. The Ftj gave weight to the Respondent's view of what were in his best interests. Having lived in the UK for 2 years the Ftj concluded that it was in the best interests of the Respondent to remain in his current family unit.
7. Having identified the Respondent's best interests, the Ftj then applied the approach identified in *Razgar* [2004] UKHL 27. The Ftj was satisfied that the Respondent had established a family/private life in the UK and that a decision to remove him would interfere with that family/private life. The Ftj was satisfied that the interference was in accordance with the law and in pursuit of a legitimate aim. In assessing proportionality the Ftj identified and applied the relevant public interest factors set out in section 117B of the Nationality, Immigration and Asylum Act 2002. Although satisfied that the adults in the Respondent's life conspired to bring him to the UK with the intention that he remain here the Ftj found that the Respondent should not be punished for this. The Respondent had established a family life in the UK, when he was here lawfully, and that the family life made him happy and within which he was settled. The Respondent's family in the UK were willing and able to financially support him and his parents in the USA were in agreement with this. The Ftj concluded that it was in the Respondent's best interests to remain with "a family who loved him, with whom he is happy and where he can prosper." Although acknowledging the public interest in the maintenance of immigration control and the fact that the Respondent had only been in the UK for a relatively short period of time, the Ftj was satisfied that he could be maintained by his family in the UK, that he spoke English and was integrated here. Given the particular facts of the case, given that it was in the Respondent's best interests to remain in the UK, and given his age, when weighed up against the public interest factors the Ftj concluded that his removal would constitute a disproportionate interference with article 8. The appeal was allowed.

The grounds of appeal

8. The grounds contend that the Ftj failed to properly consider the best interests of the Respondent and that she misdirected herself given that the Respondent had only lived in the UK for a short space of time and that his parents resided in the USA. The starting point in a 'best interests' assessment would be that the child should remain with his parents and the fact that a 15-year-old did not get on well with his mother and younger sibling was insufficient to outweigh the public interest in immigration control. The grounds also argued that the Ftj failed to take into account the expense of providing education to the

Respondent when assessing the public interest considerations and that he failed to make any findings as to why the Respondent could not attend a high school in the USA. There were said to be no findings as to why the Respondent could have integrated into the UK so quickly.

9. At the hearing Mr Nath expanded upon the grounds arguing that the 'best interests' consideration was inadequate and that the Ftj should have taken into account the additional strain on the public purse of having to educate the Respondent as a relevant public interest factor. Mr Sharma submitted that, whilst this was a generous decision, it disclosed no legal error. The Ftj properly directed herself as to the applicable legal principles, there had been no challenge to the Ftj's factual findings, and the Ftj was rationally entitled to find that the public interest factors were outweighed by the very unusual facts of this case. The issue of the additional educational costs was not taken by the Respondent in her decision and had never been raised before the Ftj. In any event, the Ftj considered the general public interest factors including any additional weight on the public purse. Everything was weighed in the round.
10. I indicated that I would dismiss the Appellant's appeal and that written reasons would follow.

Discussion

11. There is no doubt that the Ftj's decision was a generous one. The issue I have to determine is whether it was a lawful decision, one in which she properly directed herself as to the law, one that she was rationally entitled to reach on the basis of the factual matrix found by her, and one that took into account all relevant considerations, including the relevant public interest factors.
12. I am in no doubt that the Ftj properly considered the best interests of the Respondent. The Respondent's credibility has never been doubted. The Ftj found, as a matter of fact, that the Respondent had a very fractious relationship with his mother and that although he got on better with his father, his parents constantly argued, and the arguments sometimes became violent. In his statement the Respondent claimed that his parents never cared for his health, education and well-being, that he sometimes had to sleep without food, and that he believed his life was seriously at risk. The Ftj found that the Respondent enjoyed a very good relationship with his paternal aunt and her husband, so much so that this relationship could be categorised as a family life relationship. This was a conclusion rationally open to the Ftj on the evidence before her. Private life and family life rights are composite rights (see *Nhundu and Chiwera v The Secretary of State for the Home Department* (01TH00613)). One must look at the substance of a relationship rather than the form. Regardless of whether it is categorised as a family life relationship or a private life relationship, the Ftj found that the relationship between

the Respondent and RS and AS was akin to that between a child and his parents. In determining the best interests of the Respondent the FtJ took into account the circumstances in which the Respondent lived in the USA, the relationship he had with his biological parents, the relationship between him and RS and AS, the Respondent's own view of his best interests (a relevant factor to take into account, see *HH (Appellant) v Deputy Prosecutor of the Italian Republic, Genoa (Respondent)* [2012] UKSC 25), and the finding that the Respondent, having lived in the UK for 2 years, was settled and integrated into his new family unit. The FtJ did not misdirect herself when considering the best interests of the Respondent and she manifestly took into account all relevant circumstances when assessing the relationship between him and RS and AS.

13. The thrust of the Appellant's 2nd ground is that the FtJ failed to attach proper weight to the public interest because she didn't take into account the additional public expense of having to educate the Respondent. Mr Nath submitted that the FtJ should have considered the additional public expense of having to educate the Respondent when weighing up public interest factors.
14. I note at the outset that the Appellant did not place any specific reliance on the additional public cost of educating the Respondent in the decision under appeal before the First-tier Tribunal. Nor was this raised in the First-tier Tribunal appeal itself. I appreciate that the Appellant was not represented at that hearing, but it was open to the Appellant to have provided written submissions supporting her decision and what she regarded as the principle public interest factors at play in this particular case. The FtJ was not invited to specifically consider the additional public expense as a significant factor weighing in the proportionality assessment.
15. Because this matter was not raised before the First-tier Tribunal there was no evidence as to the size of the additional cost, nor was there any evidence as to whether the Respondent's aunt or uncle had or would contribute financially in any way to his education. The FtJ did take into account the fact that the Appellant was financially supported by AS and RS and no issue was raised by the Appellant in respect of any other additional costs to the public as a result of the Respondent's residence.
16. When assessing the proportionality of the Appellant's decision the FtJ properly directed herself as to the *Razgar* [2004] UKHL 27 approach and took into account the factors in section 117B of the 2002 Act. The FtJ specifically considered the relatively short period of time in which the Respondent resided in the UK and that the maintenance of effective immigration controls is in the public interest. The public interest in effective immigration control identified in s.117B (1) encapsulates and reflects a wide range of factors that flow as a result of public concern at the consequences of large scale immigration. In these circumstances I am satisfied that the FtJ's general consideration

of the public interest in effective immigration control would have necessarily included any additional financial burden on the state.

17. It is clear from a holistic reading of the decision that the FtJ considered the best interests of the Respondent as a primary consideration, and that she weighed his best interests, and the strong relationship he had with his aunt and uncle, against the public interest factors supporting his removal. In so doing I am satisfied that the FtJ did take into account all relevant public interest considerations that were relied on by the Appellant, and that, in the absence of any explicit reference by the Appellant to the additional costs of educating the Respondent, it was not necessary for the FtJ to explicitly refer to this as it was necessarily and implicitly included in her assessment of the public interest in the maintenance of effective immigration controls. In the end the FtJ was dealing with a minor who had experienced a very difficult childhood with parents who did not look after him properly, and who had established a loving and caring family unit in the UK. The fact that the Respondent could have theoretically undertaken education in the USA was not at the forefront of his reasons for remaining in this country. The FtJ reached a conclusion taking full account of all relevant public interest factors and, although generous, her conclusion is not vitiated by any perversity or other public law error. In the circumstances I find that there was no material error of law.

Notice of Decision

The First-tier Tribunal did not make a material error. The Secretary of State's appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant (as he was before the First-tier Tribunal) is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.



4 July 2017

Signed

Date

Upper Tribunal Judge Blum