



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

Appeal Number: PA/02354/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 5th December 2017**

**Decision & Reasons
Promulgated
On 18th December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MS T.N.P.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Malik, Solicitor

For the Respondent: Miss Ahmad, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. The Appellant appeals to the Upper Tribunal against a decision of First-tier Tribunal (Judge Telford) dismissing her appeal against the Respondent's

refusal to grant her leave to remain in the UK on account of her asylum/humanitarian protection/ECHR rights.

Background

2. The Appellant is a citizen of Vietnam (born [] 1991). She entered the UK on 7th January 2016 illegally. She claimed asylum eight months after arrival, by which time she was pregnant with her son. Her child was born on [] 2016.
3. In summary, her claim to asylum was based on her statement that she was a supporter of Viet Tan, that her family had fallen foul of a loan shark, and that she had been arrested by the authorities on 10th January 2014.
4. In addition she claimed her father had been arrested and imprisoned on 18th December 2015. She said she was told by him not to return home as there were Viet Tan leaflets found in the house and she would be arrested.
5. She left Vietnam and entered the UK on 7th January 2016.
6. The Respondent accepted none of the core elements of the Appellant's claim. When her appeal came before the FtT he heard evidence from the appellant and it is correct to say that he found the Appellant's account lacking in credibility and dismissed her asylum/humanitarian protection claim. He also dismissed her human rights appeal.

Onward appeal

7. The Appellant sought permission to appeal. Although there were four grounds set out seeking permission, essentially these can be distilled into two challenges:
 - the judge failed to properly consider whether the Appellant qualified for leave to remain under the Immigration Rules and/or private life Article 8 considerations outside the Rules when looking at the "best interests" of a British child (grounds 1 and 2)
 - the judge's credibility findings made in respect of the Appellant's protection claim were unsustainable (grounds 3 and 4)
8. Permission was granted in terms which on my reading of it, sets out that there was little arguable merit in the grounds seeking permission on the second challenge outlined above. There was however arguable merit in the first challenge. Thus the matter comes before me to decide if the FtT decision discloses error of law requiring it to be remade.

Error of Law Hearing

9. Before me Mr Malik appeared for the Appellant and Miss Ahmad for the Respondent. At the commencement of the hearing I indicated to both parties that I was of the view that what was before me centred on grounds 1 and 2 only and this was reflected in paragraph 3 of the permission grant.

I said my provisional view was that having read the decision, I was satisfied that the FtTJ's findings with regard to the credibility of the Appellant's asylum claim were ones which were open to him. Neither party persuaded me otherwise.

10. I also said that I was of the provisional view that there was merit in the Appellant's challenge raised on her human rights grounds. I asked Miss Ahmad if she wished to say anything to the contrary. She made brief submissions but did not press the Respondent's case strongly, following which I announced I was satisfied that the Appellant's challenge on this point was made out. I now give my reasons for this finding.

Discussion

11. The outstanding matter before me therefore centres around paragraph 3 of the permission grant which says as follows:

"However, there is arguable merit in grounds 1 and 2. There does not appear to be anything within the decision which establishes that the Judge had regard to the Respondent's policy on applications for leave to remain by the primary carer of a British national child where that child would be forced to leave the territory of the EU because of removal of the primary carer. Permission to appeal is therefore granted."

12. It is now the case that the Appellant is the mother of a British national child. The Respondent gave little consideration to the best interests of the child when refusing the Appellant's claim. This is not altogether surprising. At the date of the Appellant's interview on 7th February 2017 there was no birth certificate for the child produced. This factor is reflected in the Reasons for Refusal letter dated 21st February 2017. It would seem that evidence became available at a later stage apparently confirming the child's British nationality.
13. Likewise there was no evidence to show that the child's father is involved with his care. It would appear that there may be evidence available to show the reverse is true. It was therefore incumbent upon the FtT Judge to make a fact-sensitive assessment on the reasonableness (or otherwise) of a British child leaving the UK, on the removal of his primary carer.
14. It is correct that the FtT Judge did give consideration to the question of dual nationality, but I find that consideration led him to take the wrong approach in saying:

"The Appellant is able to help the child renounce British citizenship for the purposes of the Vietnamese State." [13]
15. In short I find that there has been no proper consideration given to Section 117(B)(6) of 2002 Nationality, Asylum and Immigration Act and accordingly that part of the decision must be set aside for error and must be remade.

16. So far as any matter raised in the grounds on the Appellant's protection claim is concerned I find, as the grant of permission sets out, the FtTJ made findings which were open to him on the evidence before him. They were neither irrational nor perverse. Those findings which were set out in [18-22] of the decision are therefore preserved. The findings that the Appellant is not a refugee and that she does not qualify for humanitarian protection therefore stand.
17. I canvassed the question of disposal of this matter with the parties. Both were of the view that, as no proper consideration had been given to the Appellant's claim of being the primary carer of a British child nor to Section 117(B)(6) of the 2002 Act, then the appropriate course would be for the matter to be remitted to the First-tier Tribunal. This is on the basis that it will be necessary to carry out an extensive judicial fact finding exercise. It is fair that this is done in the First-tier Tribunal. I agree with that course.
18. The appeal of the Appellant is therefore allowed to the extent that the FtTJ's decision dismissing the Appellant's appeal under the Immigration Rules and on human rights grounds is set aside.

Notice of Decision

The appeal of the Appellant against the First-tier Tribunal's decision is allowed to the extent that the matter is remitted to the First-tier Tribunal (not Judge Telford) for that Tribunal to remake the decision on the Appellant's claim that any removal of her from the UK would be unlawful under Section 6 of the Human Rights Act 1998.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.

Signed
Deputy Upper Tribunal Judge Roberts

C E Roberts

Date 16 December 2017