



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

Appeal Number: PA/06614/2016

THE IMMIGRATION ACTS

**Heard at Newport (Columbus House)
On 6 July 2017**

**Decision & Reasons
Promulgated
On 14 July 2017**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**Z R B
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer
For the Respondent: In person

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Respondent (ZRB). This direction applies to both the

appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

2. The Secretary of State appeals against a decision of the First-tier Tribunal (Judge Suffield-Thompson) which allowed the appeal of the respondent (hereafter “the claimant”) under Art 8 of the ECHR. The judge, however, dismissed the claimant’s appeal on international protection grounds rejecting his claim to be a stateless person who was at risk if returned to Azerbaijan. The claimant has not appealed against the dismissal of his appeal on international protection grounds which stand.
3. The claimant first arrived in the UK on 11 September 1997. Thereafter, he claimed asylum, sought leave to remain as a spouse and also applied for a residence card as a family member of an EEA national. That card was issued on 5 March 2010 and was valid until 5 March 2015. The claimant also made a number of other applications seeking ILR on the basis of long residence but these were refused on 22 January 2009 and 21 July 2009.
4. On 11 May 2015, the claimant made an international protection claim, having been returned from Switzerland where he had claimed asylum. His international protection claim was refused on 26 August 2015.
5. On appeal to the First-tier Tribunal, the judge dismissed his international protection claim. However, the judge found that the claimant was the father of a 9-year-old child who had been born to his former partner, the EEA national. The judge found that applying s.117B(6) of the Nationality, Immigration and Asylum Act 2002 (the “NIA Act 2002”) the claimant was in a genuine and subsisting parental relationship with a qualifying child and that it would not be reasonable to expect him to leave the United Kingdom, consequently the public interest did not require his removal.
6. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the judge had failed properly to consider the public interest in concluding that the claimant’s removal would be disproportionate and a breach Art 8.
7. On 17 February 2017, the First-tier Tribunal (Judge Adio) granted the Secretary of State permission to appeal on that ground.
8. At the hearing before me, Mr Mills who represented the Secretary of State submitted that the judge had misapplied s.117B(6) of the NIA Act 2002 by failing to have regard to the public interest in reaching her finding that it was not reasonable to expect the claimant’s child to leave the UK. He submitted this was an error in the light of the Court of Appeal’s decision in R (MA (Pakistan) and Others) v SSHD [2016] EWCA Civ 705. However, Mr Mills indicated that he did not wish to pursue the point that the error was material given the circumstances of the child, who was then aged 9, and is now 10 years old and eligible to become a British citizen by naturalisation. He did not seek to argue that it would be reasonable, even having regard to the public interest, to expect her to leave the UK.

9. Whilst it is clear that the judge did err in law by failing to take into account the public interest in applying s.117B(6) in the light of MA (Pakistan), in the light of Mr Mills position - which it was entirely proper to take - I am satisfied that even if the public interest had been taken into account, the judge would inevitably have found that s.117B(6) applied such that the public interest did not require the claimant's removal and that his removal would be disproportionate and a breach of Art 8.
10. For these reasons, the First-tier Tribunal's decision to allow the claimant's appeal under Art 8 did not involve the making of a material error of law. That decision stands.
11. The First-tier Tribunal's decision to dismiss the claimant's appeal on asylum and humanitarian protection grounds was not challenged and that also stands.
12. Accordingly, the Secretary of State's appeal to the Upper Tribunal is dismissed.

Signed

A Grubb
Judge of the Upper Tribunal

Date: 14 July 2017