Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/01524/2017

THE IMMIGRATION ACTS

Heard at: Field House	**Decision and Reasons Promulgated**
On: 18 April 2018	**On: 19 April 2018**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS
(ANONYMITY DIRECTION MADE)

Respondent

Representation
For the Appellant: Ms Aboni, Senior Home Office Presenting Officer
For the Respondent: Mr Karim, Counsel

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant in this determination identified as MS.

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1. I have made an anonymity order because this decision refers to the circumstances of the two children of the respondent ('MS'). His step-child was born in 2011 and his biological child was born in 2016. They are both British citizens and reside with their mother and MS, as a family unit. MS married their mother in a religious ceremony on 31 July 2015, when he had leave to remain as a student, and this marriage was registered on 21 January 2017.

Immigration history

2. MS entered the United Kingdom ('UK') in 2010 as a student. He remained as a student lawfully until a further application to extend his leave was refused on 25 January 2016. However, as the letter refusing leave makes clear, he continued to benefit from leave until 4 June 2016. On 25 May 2016 he applied (in time) for leave to remain on the basis of his family life. This was refused in a decision dated 9 January 2017.

Appeal proceedings

3. The appellant ('the SSHD') has appealed against a decision of the First-tier Tribunal dated 24 August 2017 in which it allowed MS's appeal on Article 8 grounds. The First-tier Tribunal's decision turned upon a single issue, which rests on the application of section 117B(6), of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') – whether or not it would be reasonable to expect the British citizen children to leave the United Kingdom ('UK').

4. The SSHD was granted permission to appeal by First-tier Tribunal Judge Hodkinson in a decision dated 13 February 2018, on a limited basis. Judge Hodgkinson observed that it to be arguable that the First-tier Tribunal's reasoning is inadequate in relation to the section 117B(6) question, "*it being confined to [45] of [the] decision*". The First-tier Tribunal did not grant permission to rely upon the ground alleging that the reasoning on the use of deception on the part of MS is inadequate. There has been no application to renew the application for permission regarding the ground of appeal dealing with deception before the Upper Tribunal, and Ms Aboni confirmed that it was not being pursued. I therefore need say no more about it.

Hearing

5. At the hearing before me, Ms Aboni relied upon the grounds of appeal and submitted that the reasoning in relation to the section 117B(6) question is simply inadequate. She invited me to find that there was a failure to consider the Immigration Rules, a failure to consider why MS should not be expected to obtain entry clearance and no balancing exercise.

6. Mr Karim submitted that the decision was adequately reasoned, when read as a whole. He directed me to the wording of section 117B(6) to support the submission that the question was whether the child could reasonably be expected to reside in Pakistan and the issue of entry clearance therefore did not arise. He also relied upon EX1 of the Immigration Rules, and submitted that on the findings of fact, the appeal was bound to succeed. Ms Aboni did not reply to these submissions.

7. I reserved my decision, which I now provide with reasons.

Legal framework

8. Section 117B(6) of the 2002 Act states:

> "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."

9. Both parties accepted that the correct approach to the reasonableness test in section 117B(6) is set out in MA (Pakistan) V SSHD [2016] EWCA Civ 705 (7 July 2016), as recently applied in MT and ET (child's best interests; *ex tempore* pilot) Nigeria [2018] UKUT 00088(IAC) at [27] to [34]. In MA the Court of Appeal somewhat reluctantly found at [45] that the correct approach is not to consider reasonableness from the child's perspective alone but to consider this together with all the relevant public interest considerations.

Error of law discussion

10. I do not accept the submission that the First-tier Tribunal failed to balance the relevant public interest and countervailing considerations when assessing reasonableness for the purposes of section 117B(6). The decision must be read as a whole. When it is, the First-tier Tribunal:

    (i) properly directed itself to the public interest considerations at [32] to [34];
    (ii) made clear findings of fact to support the conclusion that MS had not used deception at [40] to [43];
    (iii) noted that the substantive requirements of the Immigration Rules could not be met at [45];
    (iv) properly attached, in accordance with MA Pakistan and the SSHD's applicable policy, significant weight to the children's British citizenship;

(v) found that the best interests of the children clearly required them to remain in the UK;
(vi) concluded at [46] that "*in all the circumstances*" MS satisfies section 117B(6);
(vii) and in any event, also concluded that the grave interference with MS's family life would be disproportionate in all the circumstances, including the absence of any deception in earlier applications.

11. The decision could have been more detailed and weighed up MS's immigration history, and the option open to him to obtain entry clearance as a spouse, in more comprehensive terms. However, given the finding that there was no deception, there were no "strong reasons" militating against leave, and the SSHD's own policy supported the decision reached. The nature and extent of the reasons provided must be seen in that light. Indeed, Ms Aboni did not submit that there were any such "strong reasons", and acknowledged that MS has remained in the UK lawfully, first as a student and then whilst pursuing an in-time application based on family life and his statutory appeal rights.

12. When the decision is read as a whole, the First-tier Tribunal has adequately reasoned its decision to allow the appeal on Article 8 grounds.

Decision

13. The decision of the First-tier Tribunal does not contain an error of law and is not set aside.

Signed: Ms Melanie Plimmer Dated: 19 April 2018
Judge of the Upper Tribunal