Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/07661/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13th November 2018	**On 27th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MRS SADI NOUROZI
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs A Mughal, Counsel instructed by Amis Advocates
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan whose appeal was dismissed by First-tier Tribunal Judge Devittie in a decision promulgated on 30th August 2018. The judge set out his reasons for coming to that view concluding that while there was some evidence that the earnings met the required £18,600 threshold the Sponsor failed to give answers to two very basic questions regarding his income and self-employment.

2. The judge went on to consider Article 8 outside the Rules noting there were no exceptional circumstances that had been drawn to his attention and that he would dismiss the human "growth" in the appeal.

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3. Grounds of application were lodged stating that the bank statement clearly reflected the Sponsor's self-employment income and employment income and the judge had not understood the documents correctly. It was also argued that the judge had failed to consider the right engaged under Article 8 in that there was a child in the United Kingdom and consideration should have been given under Section 55 as the child's interest was paramount. There had been no consideration by the judge as to the affect that the child remaining without his mother would have on his wellbeing. The judge had dealt with Article 8 in two short paragraphs which in all fairness did not justify the reasons for dismissing the appeal.

4. Permission to appeal was granted by First-tier Tribunal Judge Robertson in a decision dated 18th September 2019. The judge noted that as at the date of the hearing the Appellant and her husband had a 2-year-old British national son. There had been no mention of the best interests of the Appellant's son in the proportionality assessment and no mention of the Appellant's child at all in the decision. It was not known if any evidence was tendered although there was mention of the son in the Sponsor's and Appellant's joint witness statement. Permission to appeal was granted on the basis that the grounds were arguable.

5. Thus, the matter came before me on the above date.

6. Before me it was accepted by the Home Office that there was a British national son.

7. Mrs Mughal said that there was an error of law in the judge failing to consider the fact that there was a British child; as such the decision should be set aside and remitted to the First-tier Tribunal where the whole issue of the earnings and the best interests of the child could be properly ventilated and considered.

8. For the Home Office Ms Everett said she had some sympathy with the grounds because the judge had not dealt with the issue that there was a British citizen child. Nevertheless, it was arguable that there was no material error of law and no error of law in the judge's finding on the financial resources of the Sponsor. If the case had to be remitted it should be remitted purely on Article 8 grounds.

9. I reserved my decision.

Conclusions

10. The difficulty with this case is the way the judge has dealt with the Article 8 claim of the Appellant. The decision is a brief one and the judge said, in all the circumstances, that there were no exceptional circumstances from the facts before him. As he noted in paragraph 3 of his decision there was a son born in United Kingdom on 4th April 2016. Before me it was accepted that the child was British which necessarily reflected the findings set out in the refusal letter that the Appellant had a genuine and subsisting relationship with a British partner.

11. It was therefore incumbent upon the judge to take onboard the proposition that Article 8 had to embrace the consideration of the child's best interests as a primary consideration which he manifestly failed to do.

12. It has to be said that the joint witness statement of the Appellant and her partner is particularly brief and limited in its terms and the judge was not assisted by that. Nevertheless, there was a material error in law in not dealing fully with the Article 8 claim which was at least made to the judge if in rather weak terms.

13. The decision is plainly not safe because the reasoning is inadequate and the decision must therefore be set aside. Mrs Mughal sought no more than a remit to the First-tier Tribunal which, in all the circumstances, seems to me to be an appropriate disposal to the appeal before me. While I have some sympathy for the Home Office position that the findings of the judge in relation to the financial aspects should be kept intact, I think it better, in all the circumstances and given the significant error made by the judge, for there to be a fresh look at this case and to allow the appeal to be properly presented to the judge (not Judge Devittie) on the next occasion.

14. I am therefore setting aside the decision of the First-tier Tribunal in its entirety. No. findings of the First Tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice statement 7.2 the nature and extent of the fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

Notice of Decision

15. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

16. I set aside the decision.

17. I remit the appeal to the First-tier Tribunal.

18. There is no need for an anonymity order.

Signed *JG Macdonald* Date 20th November 2018

Deputy Upper Tribunal Judge J G Macdonald