Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08943/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 October 2018	**On 6 December 2018**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

S A H
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Vatish, Counsel, instructed by JS Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant's partner or child. Breach of this order can be punished as a contempt of court. I make this order because the case turns on the welfare of the child and wife and I see no legitimate public interest in their identities.

2. This is an appeal by a citizen of Bangladesh against the decision of the First-tier Tribunal dismissing his appeal against the decision of the

Secretary of State on 7 August 2017 refusing him leave to remain on human rights grounds.

3. The appellant lives with his partner who is a British citizen. They live as a nuclear family and they have a child who was born on 4 January 2016. Unsurprisingly she too is a British citizen. The First-tier Tribunal decided that it was reasonable to expect the child to leave the jurisdiction and go with her mother to live with the appellant in Bangladesh. I find this a startling decision. It is not only remarkable on its own facts but it is quite contrary to a line of cases of which the decision of this Tribunal in **SF and Others (Guidance, post-2014 Act) [2017] UKUT 120 (IAC)** is probably the most recent good example. It is not in the best interests of a British citizen child to leave the advantages of living in the European Union to go and live in Bangladesh. This is recognised and is reflected in policy which the Secretary of State follows. Given that the Secretary of State was represented before the First-tier Tribunal and given that the proposition of law summarised in **SF** is very well known, or should be, it is very difficult indeed to see how the judge could possibly have reached the conclusion that he did. I have no hesitation in setting aside the decision. It is wrong in law. Mr Duffy really could not say much against this. It is a clear and obvious point.

4. I decided that the decision can and should be remade now. I note the First-tier Tribunal's findings that the evidence is credible and the judge commented favourably on the evidence of the appellant and partner. The judge should have had in his mind Section 117B(6) of the Nationality, Immigration and Asylum Act 2002. This 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."

5. For the reasons indicated it would not be reasonable to expect the child to leave the United Kingdom; that in my judgment is beyond argument. Clearly there is a genuine and subsisting parental relationship. This is not a case involving deportation and statute says the public interest does not *require* the person's removal in these circumstances. It might be that that is all that needs to be said. I will however put the matter in context. The appellant has done himself no good by overstaying in the United Kingdom. He entered lawfully but his leave ran out in May 2010 and he chose to remain and his close relationship with his partner, and of course his experiences as a parent, all postdate that. If he was the only person to be considered there would be little of merit in his case. But of course he is not the only person to be considered. His partner and his child have rights too.

6. There is an additional element in this case which is not brought out in the witness statements but was recognised by the First-tier Tribunal Judge and that is that the mother suffers a degree of disability from a condition known as ASD. This can present in different ways in different degrees of intensity and I note that the appellant's partner did not in fact mention it expressly in her statement at all. Nevertheless, it is a feature in the case which would make it even more difficult for the mother of the child to manage on her own if the father were removed although the extent of that is a matter of conjecture.

7. This is a case where the appellant has been in the United Kingdom for some time. There is every reason to accept that he is willing to work if that is permitted. He gave his evidence in the English language which suggests that his command of English is good. These are all factors weighing in favour of his being allowed to remain.

8. Without in any way seeking to condone his irresponsibility in remaining in the United Kingdom when he should not have done I find the Article 8 balancing exercise guided by statute clearly goes in favour of allowing the appeal for the sake of the child and to some extent the sake of the partner.

Decision

9. The First-tier Tribunal erred in law. I set aside its decision and I allow the appeal against the decision of the Secretary of State.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 12 November 2018