Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09745/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 November 2018	**On 07 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

RANMIT SINGH DHILLON
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Iqbal of Counsel, Visa Expert Ltd
For the Respondent: Ms Isherwood a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. On 20 September 2018 First-tier Tribunal Judge Andrew gave permission to appeal to the Upper Tribunal against the decision of First-tier Tribunal Judge Hamilton (the Immigration Judge). The Immigration Judge decided to dismiss the appeal against the decision of the respondent to refuse indefinite leave to remain in this case. The Immigration Judge's decision was promulgated on 20 August 2018. First-tier Tribunal Judge Andrew gave permission to appeal to the Upper Tribunal on the grounds that there was

an arguable error of law in not considering fully the implications of Section 117B of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) and in giving no proper consideration best interests of the child.

2. Section 117B(6) of the 2002 Act provides that in relation to a genuine subsisting parental relationship with a qualifying child (one who is a British national who has been in the UK for seven years) the removal of a person not subject to deportation is not require unless it would be reasonable to expect the child to leave the UK with the appellant. In addition, section 55 of the Borders, Citizenship and Immigration Act 2009 (2009 Act) requires the respondent when exercising his functions to safeguard and promote the welfare of children who are in the UK.

Background

3. The appellant entered the UK illegally in 2002 and does not appear to have applied for leave to remain until 2010. By that time, he had taken up with a lady by the name of [TD] whom he married, and the marriage was recognised in English law in 2010. He is therefore the spouse of [TD] and they have a child together, namely [GD], who was born on 8 October 2011. There is no dispute that [TD] is a person present and settled in the UK who is a British citizen and that in 2014 the appellant applied for leave to remain on the basis of his relationship with her. That application was unsuccessful but on 20 May 2017 the appellant applied for leave to remain on grounds that the respondent's policy ought to permit him to remain in the UK, in other words, the decision to remove him would be contrary to the respondent's stated policy of allowing people to remain in the UK where they have a subsisting relationship with a qualifying child. However, the respondent refused the application because the respondent found that the appellant had cheated in relation to an application for an English language test when he had sat the exam for the English language test on 22 January 2014. The English language test was therefore obtained fraudulently, and the certificate was invalid. Hence the appellant's presence in the UK was not considered in the public good. The respondent applied paragraph 322(5) of the Immigration Rules which provided that it is a ground of refusal to an application made for leave to remain that it is undesirable for that person to be allowed to remain in the UK because of his conduct.

Summary of the Arguments

4. The appellant was represented by Mr Iqbal of Counsel, the respondent by Ms Isherwood a Home Office Presenting Officer. Mr Iqbal submitted that there was little need to elaborate on his grounds of appeal which he relied on in full. He said this was not a deportation case and although frauds had been alleged and had not been effectively challenged, it only related to an English language test certificate which was not specifically related to the issue in hand, that of his relationship with a qualifying child. He said that the respondent had raised the question of character as a basis for refusal

but in essence his client did qualify for leave to remain in every respect as the requirements of Section 117B(6) were met in that it would not be reasonable to expect his child to leave the UK.

5. The respondent, on the other hand, had submitted a response pursuant to Rule 24 of the Upper Tribunal Rules of 2008, which stated that in the respondent's view it was reasonable for the judge to reach the conclusion he had. In summary, the appellant had utilised fraud and, if it was in the best interests of the child to remain in the UK with the sponsor's mother, there was no reason why that should not occur. This was a matter of choice for the appellant's wife and it was open to her either to stay in the UK with her child, who is now just over the age of 7, or to return to India with her child so she could re-join the appellant.

6. Mr Iqbal made further submissions to the effect that the public interest did not require the removal of a child in such circumstances. He referred to a number of passages of the First-tier Tribunal decision, including the Immigration Judge's analysis at paragraph 99, where he said that the need to maintain effective immigration controls was a paramount consideration in this case. He said that there was a conspicuous absence of any reference to Section 117B(6) in that paragraph and that should not have been absent from that paragraph. He said it was misconceived to say that the appellant had any choice; his wife and child were here, and it was in their best interests to remain together in the UK as a family. Therefore, the First-tier Tribunal failed to have adequate regard to the respondent's obligations under the European Convention on Human Rights Article 8 and the other statutory obligations referred.

7. He made several references to the decision in the case, including the case of **MA (Pakistan)** which considered the wider public interest considerations in greater detail. He said that the Immigration Judge's analysis was flawed, the judge had given inadequate consideration to the private or family life which had been formed and excessive weight to the alleged fraud. I say "alleged" but in fact Mr Iqbal reluctantly accepted that it had not been contested before the First-tier Tribunal that his client had committed fraud in this case in the sense of the Immigration Rules. He said there was no criminal act as such, the respondent's own policy guidance was clearly satisfied and therefore his client ought to have been given leave to remain.

Issues

8. Given that the appellant is with his wife and child in the UK and has been here for many years the principal issue is whether the appellant's removal would be in accordance with the Immigration Rules and in accordance with the respondent's own policy guidance as discussed and considered in the leading case of **Zambrano [2011] All ER (D) 199**. The question is whether the Immigration Judge had properly considered that guidance and

that section and whether in the light of that guidance and that section the Immigration Judge was entitled to reach the decision he reached.

Conclusion

9. Having considered carefully the arguments for both sides and read carefully the decision of the First-tier Tribunal I have decided that there was no material error of law in the decision that the Immigration Judge reached. This is a very detailed and careful decision in which the relevant case and statute law and guidance was considered. It specifically referred to the respondent's guidance in a paragraph which I will identify shortly. More importantly I have no doubt that the Immigration Judge had in mind the welfare of the appellant' s child. As Ms Isherwood submitted, in a case of this type a child cannot be used as a "trump card". The need for effective immigration controls weighed more heavily in the balance than the need for respect for the family life the appellant and his family had developed in the UK due to the appellant's own poor immigration history and his use of fraud in relation to his English language test.

10. I am satisfied that the Immigration Judge had in mind all relevant factors when he reached his decision. Although the Immigration Judge does not explicitly refer to Section 117B(6) at paragraph 99 of his decision, I am satisfied that it was at the forefront of his mind having been referred to extensively earlier in his decision. This was therefore a decision the Immigration Judge was entitled to come to on the evidence, although other judges may have given different weight to different factors.

Notice of Decision

11. The decision of the First-tier Tribunal does not contain any material error of law and accordingly I dismiss the appeal against the decision of the First-tier Tribunal.

12. No anonymity direction was made, and I make no anonymity direction.

Signed Date 30 November 2018

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 30 November 2018

Deputy Upper Tribunal Judge Hanbury