



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/23569/2016

THE IMMIGRATION ACTS

Heard at Field House
On August 10, 2018

Decision & Reasons Promulgated
On August 28, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR MUHAMMAD ZEESHAN RAFIQ
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed, Counsel, instructed by Fawad Law Associates
For the Respondent: Ms Kiss, Senior Home Office Presenting Officer

DECISION AND REASONS

1. No anonymity order is made.
2. The appellant is a national of Pakistan. The appellant entered the United Kingdom as a student on March 29, 2011. On March 11, 2013 the appellant applied for leave to remain as a spouse and was granted leave until October 16, 2015.
3. On October 15, 2015 the appellant made an application for further leave to remain as a spouse but the respondent refused the application on September 26, 2016.
4. The appellant lodged grounds of appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on October 7, 2016. His appeal came before Judge of the First-tier Tribunal Wyman (hereinafter called "the Judge") on February 28,

2018 and in a decision promulgated on March 26, 2018 the Judge dismissed the appeal under the Immigration Rules and on human rights grounds.

5. The appellant appealed this decision on April 4, 2018. He argued the Judge's assessment under article 8 was flawed in the light of the fact the appellant and his spouse had three British children. In considering whether it was reasonable to require the children to leave the United Kingdom the Judge applied a "significant obstacles test" and thereafter failed to have regard to the respondent's policy entitled "Family Migration-Appendix FM, Section 1.0 Family life as a Partner or Parent and Private Life, 10 year Routes"
6. Permission to appeal was granted by Judge of the First-tier Tribunal Hollingsworth on May 17, 2018 as he found it arguable the Judge had erred by failing to take into account the respondent's policy or the fact that the children are British citizens. It was arguable the Judge's proportionality assessment was therefore flawed.
7. When this matter came before me Ms Kiss acknowledged there had been a material error in law. She accepted that the Judge had failed to properly take into account the fact the appellant was the father of three British citizen children. Section 117B(6) of the 2002 Act clearly applied and there was no evidence the Judge had considered the aforementioned policy.
8. As Ms Kiss accepted there was an error in law I have gone on to remake this decision.
9. This was not a case where the appellant could demonstrate he and his wife had satisfied the financial requirements of the Immigration Rules but as this was an application for further leave to remain section EX.1(a) and (b) of Appendix FM of the Immigration Rules applied. This had been recognised by the Judge but in dealing with this issue the Judge failed to have regard to the aforementioned policy.
10. Where the child is a British citizen, it will not be reasonable to expect that child to leave the United Kingdom with the applicant parent or primary carer facing removal. Accordingly, where this means that the child would have to leave the United Kingdom because, in practice, the child will not, or is not likely to, continue to live in the United Kingdom with another parent or primary carer, section EX.1(a) is likely to apply.
11. Mr Ahmed did not argue that the appellant would satisfy the Immigration Rules but instead submitted that in considering the appeal under article 8 there were no public interest considerations that would justify the appellant's removal.
12. The appellant had entered the United Kingdom with leave and had made a lawful application to remain as a spouse and it was only when he sought to extend that leave that he found himself in difficulties. Part of those difficulties related to an issue over his English language certificate but the Judge had dealt with this and concluded at paragraph 77 that there was no merit to a refusal on suitability grounds.

13. Taking into account the best interests of the children and in particular Section 55 of the Borders, Citizenship and Immigration Act 2009 I find that it would not be in the children's best interests for them to be separated from their father a person who had previously been granted leave to remain on family life grounds and with whom they had lived all their lives. Nothing had changed since that application save the appellant and his wife now had three British children.
14. Ms Kiss acknowledged that the respondent's position, as set out in the refusal letter, was untenable and I have no hesitation in remaking this decision by allowing the appeal on article 8 grounds.

DECISION

15. There was an error in law for the reasons set out above and I set aside the decision.
16. I have remade the decision and I allow the appeal on human rights grounds.

Signed

Date 10/08/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as none was requested.

Signed

Date 10/08/2018



Deputy Upper Tribunal Judge Alis