



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/23819/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 12 July 2018

Decision & Reasons Promulgated  
On 30 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MD ABDUL MUKIT  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms. J. Isherwood, Home Office Presenting Officer  
For the Respondent: Mr. M. West, Counsel instructed by Kalam Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Courtney, promulgated on 26 January 2018, in which she allowed Mr. Mukit's appeal against the Secretary of State's decision to refuse further leave to remain.
2. For the purposes of this decision I refer to the Secretary of State as the Respondent, and to Mr. Mukit as the Appellant, reflecting their positions as they were before the First-tier Tribunal.
3. Permission to appeal was granted as follows:

“It is arguable that the judge erred in concluding that there was no criminality after finding the appellant had used deception in an attempt to obtain leave to remain”.

4. The Appellant attended the hearing. I heard submissions from both representatives following which I stated that I found the decision did not involve the making of a material error of law.

### **Error of Law**

5. The Judge found from [11] to [21] that the Appellant had failed to show that he had not used deception. She was satisfied that she should treat the “invalid” assessment as reliable [21].
6. She then turned to consider whether the Appellant fell for leave to remain in relation to his British child. She referred to the Immigration Directorate Instruction. At [24] she states:

“In **MA (Pakistan) [2016] EWCA Civ 705** the Court of Appeal held that the court should have regard to the conduct of the applicant when considering the question of reasonableness under section 117B(6). The only significance of section 117B(6) is that where it is satisfied it is a factor of significant weight leaning in favour of LTR being granted. Even where a child’s best interests are to stay in the UK, it may still not be unreasonable to require them to leave. That will depend on a careful analysis of the nature and extent of the links in the UK [§47]. However, in the instant case the Respondent herself has acknowledged in the refusal letter [at page 6] that it “*would be unreasonable to expect your child to leave the UK*”. No issue has been taken by the Secretary of State with regard to the Appellant having a genuine and subsisting parental relationship with his daughter Aliyah. I therefore conclude that the Appellant’s appeal should be allowed. The period of leave to be granted to him is a matter to be determined by the Secretary of State”.

7. I find that there is no material error of law in this conclusion. Section 117B(6) provides:

“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”.

8. Although the Judge found that the “invalid” assessment was reliable, there was no established criminality. The standard of proof in criminal cases is “beyond reasonable doubt”. In the decision there is a finding “on the balance of probabilities”. However, more importantly, this is not a deportation case, therefore for the purposes of section

117B(6), the first part is made out – this is not the appeal of an individual who is liable to deportation.

9. As set out by the Judge, the Respondent accepted in the Reasons for Refusal Letter that the Appellant had a genuine and subsisting parental relationship with his child. No issue was taken with this, as confirmed at [24]. Most importantly, the Respondent also accepted that it would be unreasonable to expect the Appellant's child to leave the United Kingdom. Therefore the requirements of section 117B(6)(b) are satisfied. The Appellant's application was refused because the Respondent considered that he had used deception, but nevertheless considered that it would be unreasonable to expect the Appellant's child to leave the United Kingdom. It was not for the Judge to go behind this concession which she refers to explicitly at [24].
10. Given this concession by the Respondent I find, as submitted by Mr. West, that the Respondent has effectively backed himself into a corner with regards to the Appellant's case. The statutory provision which would take precedence over the Immigration Directorate Instruction is clear that in the case of a person not liable to deportation, which the Appellant is not, where he has a genuine and subsisting parental relationship with a qualifying child, which he does, and where it would not be reasonable to expect the child to leave the United Kingdom, which the Respondent has accepted, the public interest does not require his removal.
11. It would of course be possible for a judge to find that it would be reasonable to expect a child to leave the United Kingdom in circumstances like those of the Appellant. Consideration of the Appellant's conduct would come into any reasonableness assessment. However, what is not open to a judge to do is to go behind a concession made by the Secretary of State. In the Appellant's case the Judge was clearly aware of the concession made and I find that there is no material error of law in the decision.
12. The Reasons for Refusal Letter then went on to consider whether the Appellant's child would have sufficient care in the absence of the Appellant, and also whether the Appellant's partner and child could join him in Bangladesh to enjoy family life together. However, there was no need for the Judge to consider this given the concession by the Secretary of State that it would be unreasonable to expect the child to leave the United Kingdom.
13. The grounds of appeal do not refer to section 117B(6) which is unfortunate. Had the author of the grounds of appeal correctly considered the requirements of section 117B(6), together with the Respondent's concession in the Reasons for Refusal Letter, and being mindful that this was not a deportation case, it would have been clear that, the Judge being aware of the Respondent's acceptance that it was not reasonable to expect the Appellant's child to leave the United Kingdom, there was no material error of law in the decision.

#### **Notice of decision**

14. The decision of the First-tier Tribunal does not involve the making of a material error of law. The decision of the First-tier Tribunal stands.

15. I do not make an anonymity direction.

Signed

Date 25 July 2018

**Deputy Upper Tribunal Judge Chamberlain**