



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/27284/2016

THE IMMIGRATION ACTS

Heard at Field House
On 8 August 2018

Decision & Reasons Promulgated
On 21 August 2018

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

Z K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity should be granted because the case involves an assessment of child welfare issues. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

Representation:

For the appellant:

Mr H. Sarwar, instructed by DEO Volente Solicitors LLP

For the respondent:

Mr I. Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 08 December 2016 to refuse a human rights claim.
2. First-tier Tribunal Judge Hawden-Beal ("the judge") dismissed the appeal in a decision promulgated on 13 December 2017.
3. The appellant appealed the First-tier Tribunal decision on the following grounds:
 - (i) The judge erred in her approach to section 117B(6) of the Nationality, Immigration and Asylum Act 2002 ("the NIAA 2002"), which was contrary to the guidance given in *MA (Pakistan) v SSHD* [2016] EWCA Civ 705.
 - (ii) The judge failed to make any findings relating to the best interests of the children.
 - (iii) The judge failed to consider adequately the respondent's guidance outlined in *SF and Others (Guidance, post-2014 Act) Albania* [2017] UKUT 00120.


Decision and reasons

4. It is not necessary to make any detailed findings in relation to the grounds of appeal, although there was some divergence between the parties on the first ground, it was agreed that the judge erred in failing to make any clear findings relating to the best interests of the children.
5. There is a long history of binding case law repeating the importance of the need to make clear findings as to where the best interests of children lie and to give appropriate weight to the children's interests as a 'primary consideration. Despite the fact that it is trite and binding law, and even though the interests of the children were of central importance to the case, it is apparent from the face of the decision that the judge made no clear findings as to whether it was in the interests of the children to remain in the UK in a family unit with their father, and if it was, whether the appellant's immigration history was sufficiently serious to outweigh the significant weight that should be given to the interests of children who are long settled in the UK. No consideration was given to the potential impact on the children of a prolonged separation from their father.
6. Outstanding factual disputes, such as the appellant's length of residence in the UK, will need to be determined. An evaluative assessment will need to be made of the impact of the decision on the appellant and his family members. The parties agreed that the nature and extent of judicial fact finding that is necessary to remake the decision is such that it is appropriate to remit the case to the First-tier Tribunal for a fresh hearing (see paragraph 7.2 Practice Statement - 25/09/12).

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision is set aside and is remitted to the First-tier Tribunal for a fresh hearing

Signed 
Upper Tribunal Judge Canavan

Date 08 August 2018