



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/06263/2017

THE IMMIGRATION ACTS

Heard at: Field House
On: 20 April 2018

Decision and Reasons Promulgated
On: 29 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR ALI REYAD MOHAMED ZAHER
(NO ANONYMITY DIRECTIONS MADE)**

Respondent

Representation:

For the Appellant: Mr P Nath, Senior Presenting Officer
For the Respondent: Mr Miss K Reid instructed by Signature Law LLP.

DECISION AND REASONS

1. The appellant before the Upper Tribunal is the Secretary of State for the Home Department and the respondent is a citizen of Egypt born on 1 July 1985. However, for the sake of convenience, I shall continue to refer to the latter as the “appellant” and to the Secretary of the State as the “respondent”, which are the designations they had in the proceedings before the First-tier Tribunal.
2. The First-tier Tribunal Judge Courtney allowed the appellant’s appeal pursuant to Article 8 of the European Convention on Human Rights. She found that on the totality of the evidence before her that the appellant has discharged the burden of proof.
3. Permission to appeal was granted by First-tier Tribunal Judge Saffer on 25 January 2018 stating that the appeal on asylum and Article 3 grounds was abandoned. It was

however allowed an Article 8 grounds. It is arguable because the Judge stated that the immigration rules were met with regards to the relationship requirements without giving reasons for why they were met. In addition, it is arguable that there was inadequate consideration to section 117B within the assessment.

4. The First-tier Tribunal Judge made the following findings which I summarise. The appellant's claim is that he was born in Egypt and arrived in the United Kingdom on 8 May 2015. The appellant met his wife Michelle on 1 June 2015 and they married in an Islamic ceremony on 21 May 2017. They had a civil ceremony on 31 July 2017. The appellant claims that he is the father figure for his stepson who was born on 20 February 2012.
5. In respect of Appendix FM, no issue was taken by the respondent as to the appellant's genuineness of the relationship with his wife. The appellant's wife is in receipt of standard rate of personal Independence payments to help her with the daily living needs and her mobility needs and therefore the appellant satisfies the financial requirements of Appendix FM as her P 60 for the year ending 5 April 2016 indicates that she earns £27,445 and that tax year. The appellant has passed his English language test and therefore meets the English language requirements.
6. With regard to the second limb of paragraph EX1 the appellant relies upon his wife's ill-health, her inability to speak Arabic: and the general risks to British citizens in Egypt.
7. The Judge took into account the following factors in deciding whether it would be reasonable to expect the appellant's step child to relocate to Egypt with the appellant and his wife. The first was that he has maternal grandparents in the United Kingdom with whom he is in regular contact. Second, Egypt has had a troubled recent history with considerable unrest. Third, neither the step child nor his mother speaks any Arabic. Fourth, the child has had a Catholic upbringing whereas Egypt is a predominantly Muslim country. The country policy and information note on Egypt of July 2017 states that Christians are an established and significant minority in Egypt with an estimated population of between 8 to 15% of the overall population. It further states that they are generally able to live and work alongside Egyptians of other faiths although some face societal discrimination and violence, including episodes of looting, bomb and arson attacks, blocking of church construction, kidnapping and mob violence. Fifth, according to the CPI report including actors of protection, and internal relocation (July 2017), the quality of public education in Egypt is very low. Taking all these factors into account the judge found that it would not be reasonable to expect the appellant's step child to leave the United Kingdom and relocate to Egypt.
8. In respect of Article 8, the terms of the rules are relevant to the consideration of the claim under Article 8. Indeed, appendix FM begins by stating at paragraph GEN. 1. 1 that "it reflects how, under article 8 of the human rights Convention, the balance will be struck between the right to respect for private and family life and the legitimate

aims of protecting national security, public safety and the economic well-being of the United Kingdom: the prevention of disorder and crime: the protection of health or morals: and the protection of the rights and freedoms of others”.

9. The appellant has met the requirements of the immigration rules and in consequence the interference with family life of the appellant and his wife and stepson occasioned by the refusal of entry clearance is not “necessary” in pursuance of those legitimate interests.
10. The appellant’s stepson is a qualified child for the purpose of section 117B [see section 117D (1) is that the public interest does not require the appellant’s removal in circumstances where it would be unreasonable to expect the step child to leave the United Kingdom. The Judge concluded by saying “in my judgement the respondent’s decision does not involve the striking of a fair balance between the rights of the individual and the interests of the community and would interfere disproportionately with the parties’ family life”.
11. The Secretary of State’s grounds of appeal states that the Judge made a material misdirection of law by allowing the appellant’s appeal without regard to the public interest factors outlined in section 117B of the Nationality, Immigration and Asylum Act 2002. The Judge did not conduct the proportionality balance correctly. The Judge has failed to consider that this appellant used a false name and nationality when encountered by the Home Office enforcement team in line with section 117 (b) and has materially erred in law.
12. Reliance is placed on the case **of Dube (ss 117A- 117D) [2015] UKUT 00090 (IAC)** in which the headnote states “Judges are required statutorily to take into account a number of rated considerations. Section 117 a-117D are not therefore, an à la carte menu of considerations that it is at the discretion of the Judge to apply or not apply. Judges are bound to have regard to the specified considerations.
13. The appellant’s Rule 24 response states that it is clear from the Judge’s decision that the Judge has addressed the public interest factors outlined in section 117B in both substance and form. The appellant has a genuine and subsisting relationship with a qualifying child and it would be unreasonable to expect the child to leave the United Kingdom. It would be disproportionate to require the step child to leave the United Kingdom. It was accepted by the Secretary of State that the appellant has a genuine and subsisting relationship with his wife and his stepson.

Decision on the error of law

14. I have considered the First-tier Tribunal Judge’s decision with due care and scrutiny. The respondent’s primary complaint is that the Judge did not take into account paragraph 117A-117D in her proportionality exercise under Article 8.

15. Having considered the decision as a whole, the Judge did take into account paragraph 117B-117D and made her findings based on the criteria therein. The respondent's grounds are no more than a quarrel with the Judge's decision and the conclusions that she arrived at on the evidence before her. She applied the correct law and came to the correct decision.
16. The Judge found that the appellant's stepson was a qualifying child and it would not be reasonable to expect him to return to Turkey. The judge at paragraph 27 of her decision set out cogent reasons for why the appellant's stepson cannot return to Egypt with the appellant and his wife. First, she concluded that the appellant's wife is in need of medical care which she is receiving in the United Kingdom. Second, she said that the appellant's stepson cannot be expected to live in Egypt because he is in regular contact with his grandparents. The Judge took into account background evidence on Egypt and said that the country has a troubled recent history with considerable unrest and did not think it is reasonable for the step child to live in such an environment. The Judge also took into account that the child and the mother do not speak any Arabic. She also considered the fact that the child has had a Catholic upbringing whereas Egypt is a predominantly Muslim country and that considered the background evidence where it states that there is discrimination and sometimes violence against Christians in Egypt. She also considered that Egypt's standard of education is very low.
17. Given all these articulated reasons, no differently constituted Tribunal Judge would find it reasonable to expect a British citizen child to live in such a country and risk his welfare. The best interests of the child was at the forefront of the Judge's mind as it ought to be.
18. It is not incumbent on the Judge to set out all the factors in section 117 and address all the individual criteria. The Judge more than adequately considered the public interest factors set out in section 117 a-117B in form and in substance.
19. The respondent complains that the judge did not take into account that the appellant had used false name and nationality when arrested by the Border Agency. However, the Judge took considered section 117B (6) (a) (b) in which it states that "in the case of a person who is not liable to deportation, the public interest does not require the person's removal where, "the person has a genuine and subsisting parental relationship with a qualifying child and that it would be unreasonable to expect the child to leave the United Kingdom". There was no dispute that the appellant's step child was a qualifying child as he is a British citizen. The Judge was entitled to find that it is not reasonable for him to go to Egypt.
20. One other matter needs clarification. The permission Judge stated that the Judge did not give reasons why she so found that the appellant's marriage was genuine and subsisting. The respondent had accepted that the appellant's and his wife's

relationship was genuine and subsisting. The respondent has not taken issue with this in his grounds of appeal.

21. The Judge has not fallen into material error and in a careful decision considered all the evidence, correctly applied the law and came to a sustainable decision.
22. I therefore dismiss the Secretary of State's appeal. This finalises the appeal.

DECISION

The Secretary of State's appeal is dismissed.

Signed by

Mrs S Chana
A Deputy Judge of the Upper Tribunal

The 27th day of June 2018