



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/24068/2018

THE IMMIGRATION ACTS

Heard at Field House

On 25 April 2019

**Decision & Reasons
Promulgated
On 09 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**SAQLAIN ALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Shoker of H & McLaws Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Andrew promulgated on 11 February 2019 dismissing an appeal against a decision of the Respondent dated 13 November 2018 on human rights grounds.
2. In the circumstances explained below it is not necessary for me to rehearse the history and details of the Appellant's status in the United Kingdom, or the substance of his human rights claim.

3. It is accepted by Mr Avery that I should find error of law on the part of the First-tier Tribunal and set aside the decision, and also that the consequence is the decision in the appeal requires to be re-made in favour of the Appellant.
4. Mr Avery's concessions in this regard are made pursuant to the decisions in the cases of **KO (Nigeria) [2018] UKSC 53**, **JG (s 117B(6): "reasonable to leave" UK) Turkey [2019] UKUT 72 (IAC)**, and also the more recent decision of **AB and AO v Secretary of State for the Home Department [2019] EWCA Civ 661**.
5. The focus of the Appellant's case before the First-tier Tribunal was in respect of his relationship with 'qualifying' children. The Judge made the following finding:

"I then turn to Section 117B(6). I accept that the Appellant now has a genuine and subsisting relationship with qualifying children. I also accept that it would not be reasonable to expect the children to leave the United Kingdom. I further accept that the Section says that in these circumstances the public interest does not require the person's removal". (paragraph 16)
6. Notwithstanding the clear finding that section 117B(6) was engaged and that accordingly the public interest did not require the Appellant's removal, the Judge went on to consider other aspects of the public interest considerations under section 117B of the Nationality, Immigration and Asylum Act 2002 to reach a 'global' assessment. In this regard it is to be noted that it is plain that the Judge was concerned about the very poor immigration history of the Appellant - indeed most of the findings in the Decision up to paragraph 16 are adverse. The Judge's approach, and conclusion that the Appellant should not succeed in his appeal, essentially marginalised or negated the effect of section 117B(6).
7. The effect of the case law cited above now makes it plain that section 117B(6) means exactly what it appears to mean -, which is to say that once it is engaged there is no public interest in removing the applicant / appellant. It was expressly recognised in the case of **JG** that this might lead to *"an undeserving individual or family remaining in the United Kingdom"* (paragraph 41). In **AB and AO** the Court of Appeal agreed with the interpretation given to section 117B(6)(b) by the Upper Tribunal in **JG** (paragraph 72).
8. The grant of permission to appeal acknowledges that the First-tier Tribunal Judge would have been unaware of **JG** because it was promulgated after her Decision. Be that as it may, as I have indicated, Mr Avery acknowledges that the effect of these decisions is that the decision of the First-tier Tribunal cannot stand. The findings however, which are sound and are not the subject of any cross-challenge, do mean that the consequence of the conclusion at paragraph 16 is that the public interest does not require the removal of the Appellant from the United Kingdom. His appeal succeeds on that basis.

Notice of Decision

9. The decision of the First-tier Tribunal contained a material error of law and is set aside.
10. I re-make the decision in the appeal. The appeal is allowed on human rights grounds.
11. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed

Date: **2 May 2019**

Deputy Upper Tribunal Judge I A Lewis

TO THE RESPONDENT
FEE AWARD

I have allowed the appeal and in all the circumstances make a full fee award.

Signed

Date: **2 May 2019**

Deputy Upper Tribunal Judge I A Lewis
(*qua* a Judge of the First-tier Tribunal)