



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number:
PA/10907/2018

THE IMMIGRATION ACTS

Heard at North Shields

On 24 May 2019

Decision & Reasons

Promulgated

On 19 June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**M. Y.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brakaj, Solicitor, Iris Law Firm

For the Respondent: Ms Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant entered the UK unlawfully on a date unknown. He made a protection claim in 2011, but this was refused for his failure to engage with the process. He then offered further representations on 1 October

- 2013, which was accepted as a fresh claim, but refused on 24 August 2018.
2. The Appellant's appeal against that decision was heard and dismissed on asylum and humanitarian protection grounds, but allowed on human rights grounds as a disproportionate interference in Article 8 rights, by First Tier Tribunal Judge Hands in a decision promulgated on 11 February 2019.
 3. The Respondent was granted permission to appeal the decision on Article 8 grounds, by decision of 13 March 2019 of First tier Tribunal Judge EB Grant. It was considered arguable that the Judge's approach had failed to follow the guidance to be found in GS (India) [2015] EWCA Civ 40. There was no cross appeal.
 4. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence.
 5. Thus the matter came before me.

The challenge

6. When the appeal was called on for hearing Ms Pettersen accepted that the Judge had overlooked no material evidence, and had included no irrelevant evidence. The reasons that had been given for the decision were adequate, and the Respondent had not asserted that the decision was perverse. It was accepted that the Judge's decision was one that was open to her on the evidence before her.
7. Ms Pettersen advanced the complaint that the Judge had elevated one part of the evidence over all the rest. Thus it was argued that the Judge had taken the difference in education within China and the UK, and that this had been the determinative factor in her decision. I am not satisfied that this is a fair reading of the decision as a whole, and to be fair to Ms Pettersen this argument lost any force as we went through the Judge's decision together.
8. It was accepted that the Appellant's eldest child is now a qualifying child; section 117D. There are two, Et and Ev, both have significant medical and educational needs. In addition the Appellant also has significant medical needs.
9. It was accepted that the Judge was correct to conclude that the Article 8 rights of the Appellant, his partner and his two children were all engaged by the decision under appeal, as a result of the "private lives" established in the UK. Their removal would be together, so the Judge

was correct to identify that this would have no impact upon their ability to enjoy "family life" together.

10. In my judgement, when the decision is read as a whole, it is quite clear that the Judge's decision was one that was well open to her on the evidence, and that it was adequately reasoned. In the circumstances, and as indicated at the hearing I am satisfied that the Judge did not fall into any material error of law when she allowed the Article 8 appeal, notwithstanding the terms in which permission to appeal was granted. In my judgement the grounds fail to disclose any material error of law in the approach taken by the Judge to the public interest that requires her decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 11 February 2019 contained no material error of law in the decision to allow the Appellant's human rights appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him, his partner, or his children. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 14 June 2019