Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11944/2018**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 19 September 2019	**On 24 September 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

NH
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed, Counsel
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

1. The appellant is a citizen of Pakistan. She has two children born in 2007 (in Pakistan) and 2012 (in the United Kingdom). They are both Pakistani citizens but "qualifying children" for the purposes of s. 117B(6) of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act').

2. I have made an anonymity direction because this decision refers to the circumstances of the appellant's children.

3. The appellant has appealed against a decision of First-tier Tribunal ('FTT') Judge Forster sent on 4 July 2019, in which her human rights and asylum appeals were dismissed. The findings in relation to the asylum claim have not been challenged in the grounds of appeal against the FTT's decision, and I need say no more about them.

Background

4. The appellant arrived in the United Kingdom as a student in 2010. Her husband and elder child joined her in 2011. When her visa expired in 2015, the appellant remained as an overstayer. Her claim for asylum in 2016 was unsuccessful and ultimately dismissed by FTT Judge Cox in a decision dated 9 February 2018. Fresh submissions resulted in a further refusal and the appeal before Judge Forster.

5. The appellant now seeks to appeal against this decision, permission having been granted by FTT Judge Loke in a decision dated 2 August 2019.

Grounds of appeal

6. At the beginning of the hearing, Mr Ahmed accepted that although the grounds of appeal are threefold, he no longer relied upon grounds 1 and 3. Mr Ahmed was correct to take this approach. Contrary to vague written submissions in ground 1, the Judge Forster clearly took into account the best interests of the children at [28-29] and [38] of his decision. This has clearly informed the overall assessments made and this ground of appeal is without merit. Ground 3 is also without any merit. It refers to the respondent's policy on British citizen children, without acknowledging that the appellant's children are not British citizens. I therefore turn to ground 2, the only ground of appeal relied upon by Mr Ahmed in his very brief submissions.

7. Judge Forster was satisfied that it would be reasonable for the children to return with their mother at [30] by reference to 276ADE(1)(iv) of the Immigration Rules. This provision largely mirrors s. 117B(6) of the 2002 Act. Although Judge Forster made no reference to the relevant authorities, when the decision is read as a whole his findings have been reached in line with the principled approach to s. 117B(6) of the 2002 Act as established in KO (Nigeria) v SSHD [2018] UKSC 53, and applied more recently in SSHD v AB (Jamaica) and AO (Nigeria) [2019] EWCA Civ 661. For the purposes of this appeal two fundamental principles are important to highlight: (i) the approach to the question of reasonableness in s. 117B(6)(b) is child-focussed and should not include a balancing of the conduct and immigration history of the child's parents, (ii) but the record of the parents may be indirectly material if it leads to their ceasing to have a right to remain here, such that reasonableness must be considered in the real world in which children find themselves. In other words the real world forms the background against which the reasonableness assessment is assessed.

8. Whilst Judge Forster made reference to the appellant and her children not having the right to reside in the United Kingdom, and the appellant's immigration history at [32], this was done by way of background to explaining the "real world" scenario the family found themselves in. This is not inconsistent with the correct approach summarised in the authorities I have referred to above. Whilst Judge Forster may have used language that is less than clear at certain points and failed to direct himself to the well known up to date authorities, his assessment does not contain a material error of law. Mr Ahmed invited me to find that Judge Forster was wrong to suggest that there was a requirement of adverse impact on the children and / or compelling circumstances for the effect to be unreasonable. However each of the observations in [32] were open to the judge, and he was not applying a higher threshold than that clarified in KO (Nigeria).

9. Even if I am wrong about this, I am satisfied that any error in taking into account the appellant's immigration history is not a material error of law. This is because on any view of the family's accepted circumstances this is a case in which there could have only been one outcome when KO Nigeria is properly applied: notwithstanding the length of the children's residence, in the real world it would not be unreasonable to expect them to leave with their mother to reside in Pakistan, the country of their citizenship. The children are both healthy, as is their mother. Their mother is well educated and on the FTT's findings of fact will be able to adequately care for the children with the help of her extended family in Pakistan. The claim that s. 117B(6)(b) could be met, and the related Article 8 appeal was therefore bound to fail on any legitimate view.

Decision

10. The FTT's decision did not involve the making of an error of law and I do not set it aside.

Signed: *UTJ Plimmer*

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
19 September 2019