



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006313

First-tier Tribunal No:
HU/04706/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

13th September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

GYTIS BABENSKAS
(ANONYMITY ORDER NOTE MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 16th August 2023

DECISION AND REASONS

1. The Appellant appeals with permission granted at the First-tier Tribunal, the decision of First-tier Tribunal Judge Parkes, promulgated on 7th December 2022 in which the judge dismissed the Appellant's appeal brought on human rights grounds to defeat his deportation and following a hearing on 25th November 2022.
2. The appellant did not attend the hearing and was not represented. I checked the file and saw that notices had been sent to the appellant at his postal address as well as by e mail to his representative at Clifton Law.
3. The grounds which are drafted by counsel at paragraphs 6 (a) to (d) argue material misdirection in the context of the structure of the judge's decision and

reasoning, arguing that there is insufficient consideration of the unduly harsh test because the partner and child's circumstances have been considered together rather than separately, and that in considering whether or not the unduly harsh test has been met the judge has factored in the public interest and refers himself to an exceptional circumstances test outside of the applicable Rules rather than Section 117C(6) of the NIAA 2002. The grounds also challenge the judge's assessment of the position of the child, arguing that there is no specific finding about the best interests relevant to this particular child, further in assessing the position in respect of the partner and child the judge has failed to consider that the partner has been here since she was 19 years old and has settled status, and also that the judge has failed to take into account that the Appellant's son would be entitled to register as British. Further, the judge has failed to take into account the Appellant's lawful residence as a qualified person having entered as a minor dependant of his mother.

4. In a Rule 24 response the Respondent submits that the judge directed himself appropriately when at paragraph 7 he reminded himself of the effect of Section 117C of the Nationality, Immigration and Asylum Act 2002 and the judge had structured his determination dealing with each individual factor bearing on the different scenarios his wife and child might face were they to accompany the Appellant to Lithuania or to remain in the United Kingdom without him. In respect of the best interests point there was no evidence before the judge of how the child might be affected by moving to Lithuania with his parents or remaining in the UK without his father. The grounds do not set out how either potential separation of father and child or the location of the family to the Lithuania would have any adverse impact. The Appellant's partner's rights have been addressed at paragraph 22 and 24 and the Appellant's earlier lawful residence was a matter which was included in the judge's consideration of the Appellant's level of protection against deportation. The judge has recognised that the child has the option to make an application for registration.
5. Taking into account the written application, the Rule 24 and the oral submissions of the Respondent and considering the judge's decision set against the context of the documentary and oral evidence before the First-tier Tribunal I find that there is no merit in the grounds. The Nationality and Immigration Act at Section 117C (5) requires the judge to consider the position vis-a-vis the Appellant's partner and vis-a-vis the Appellant's child. The judge has given detailed consideration to their factual circumstances and nothing in the grounds, on a complete reading of the decision, has been omitted by the judge. In particular, at paragraph 24 the judge notes the Appellant's partner's length of residence as well as the presence of her family. The judge also takes into account at paragraph 18 that as a result of her settled status the family has the opportunity to make an application for a British passport should they choose to do so, for the minor child. As at the date of hearing the judge notes no such application had been made.
6. In respect of a consideration of the child's best interests the judge finds that the most important thing is for the child to be brought up by both parents in a stable and loving environment. The judge was satisfied that that position can continue in Lithuania and that there was no evidence that that would cause any undue harshness to the child. The judge also considered the position in the event that the Appellant and his partner chose that the partner should remain in the United Kingdom, and finds that there would not be any undue harshness as the partner and child would be in a position to visit on a regular basis subject to their

means. With regard to the position of the partner at the judge points out that if she chose to remain in the United Kingdom she would continue to enjoy family relationships with her wider family but if she chose to go to Lithuania then she would be able to return to visit.

7. At paragraph 31 the judge concludes that the evidence does not show that it would be unduly harsh for the partner and son to return to Lithuania, but in the event that they stayed in the United Kingdom neither would face any undue harshness in remaining here with out the appellant.. The judge notes that although the best interests of the child is to be with both parents in this case that position does not operate to militate against deportation, and there are no circumstances that would justify allowing the appeal.
8. Allowing that this is a case where the judge could have adopted a better structure to his decision, and it is lengthened by the reference to the rules, reading the decision in the round the judge considered and made findings of fact relevant to all the pertinent matters and reached conclusions which were reasonably open on the facts as found. The grounds rely on form rather than substance. Nothing in these grounds establishes any material error of law.
9. The Appellant's appeal is dismissed.

Notice of Decision

The judge's decision dismissing the appeal is not vitiated by error and stands . _

E M Davidge

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 August 2023