



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/07350/2015

THE IMMIGRATION ACTS

Heard at Field House
On 9 August 2018

Decision & Reasons Promulgated
On 29 August 2018

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

A Z
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Shrester of Counsel, instructed by Law Lane Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The respondent challenges the decision of First-tier Tribunal Judge Beg to allow this appeal against removal on article 8 grounds. For convenience, I refer to the parties as they were before the First-tier Tribunal.
2. The appellant is a Pakistani national born on 22 October 1974. He entered the UK as a student on 1 January 2012. Thereafter his leave was curtailed to end on 14 March 2014 because it was considered he had used deception to obtain an

English language certificate. The appellant overstayed and on 23 April 2015 applied for leave to remain on the basis of his private and family life. He claimed to be living with AZ, a Pakistani national who had two children born in 2001 and 2005. The application was refused on 23 September 2015. since then the appellant and AZ have had a child, born in December 2015.

3. The appellant challenged the decision and his appeal was heard by Judge Flynn. She heard oral evidence from the appellant and AZ. She did not find the appellant to be a credible witness and was not satisfied that he had been a genuine student. She found that he had used deception to obtain his TOEIC certificate. She found that his presence was not conducive to the public good and dismissed the appeal under the Immigration Rules. She also considered article 8. She accepted that there was family life between the appellant, his partner, her children and their child but found that the separation of the appellant from his partner's children would not have a lasting negative impact upon them. Accordingly the judge dismissed the appeal on 29 November 2016 (promulgated on 6 December 2016).
4. The appellant appealed against that decision and permission was granted to him by First-tier Tribunal Judge Astle on 19 June 2017 on the basis that the judge had arguably misunderstood the shifting burden of proof. On 19 October 2017, Upper Tribunal Judge Blum heard submissions from the parties and set aside the judge's determination, remitting it back to the First-tier Tribunal for a fresh decision.
5. The matter then came before Judge Beg on 8 March 2018. She too found that the appellant had used deception to obtain his student leave but on the basis of the best interests of the children and the fact that it would be unreasonable to expect the two older qualifying children to leave the UK, she allowed the appeal. It is the respondent's challenge to that decision which has led to these proceedings.
6. **The Hearing**
7. I heard submissions from the parties at the hearing before me on 9 August 2018. The appellant and AZ were present, albeit they arrived late.
8. Mr Walker relied on the Secretary of State's grounds and argued that the point was a narrow one. It was maintained by the respondent that the judge had not placed weight on the public interest and, given that she found that the appellant had used deception to obtain leave, she had failed to identify any exceptional circumstances which made the decision disproportionate. She had focused only on the children and allowed the appeal on that basis. Her proportionality assessment was flawed.

9. Mr Shrester replied. He pointed out that the issues raised in the grounds of the appellant's inability to speak English, the precariousness of his situation and his lack of financial independence were all matters that the judge had addressed in her determination. Notwithstanding those issues, she had to consider whether it was reasonable to expect the qualifying children to leave the UK and she found that it was not. This was not a deportation case and the judge's finding that he had used deception did not mean that everything he had established should be disregarded. This was a family life case, not a private life claim. The appellant's partner had suffered domestic abuse in the past and had been granted discretionary leave. It was therefore not reasonable to expect her to return to Pakistan.
10. Mr Walker responded. He maintained that the appellant's submissions did not point to anything beyond the schooling of the children. There were no health issues. The appellant and AZ were now married so her circumstances on return would be different to what they would have been had she returned as a single woman (when discretionary leave was granted).
11. That completed the submissions. At the conclusion of the hearing I reserved my determination which I now give with reasons.

Discussion and Findings

12. I have had regard to the submissions, the judge's determination and all the other evidence on the Tribunal file.
13. Whilst another judge may well have taken a different view and whilst Judge Beg's findings may be described as generous and certainly succinct, the decision does not disclose any material errors of law. The judge had regard to the public interest and all the negative matters raised by the respondent and indeed found against the appellant on the issues of deception, financial independence and language. She also considered that the relationship had commenced whilst his situation was precarious. Nonetheless, she had to give weight to the position of the two qualifying children and that is what she did. I accept that the reasoning could have been more detailed, but it is enough to show why the judge found as she did (at 55-57). In view of the length of residence of the two older children who regard the appellant as their father, their stage in education and the ties they have established, she found that it would be unreasonable for them to leave the UK and accompany the appellant to Pakistan and she also found that to separate the appellant from the youngest (his only biological child) would not be in her best interests. Mr Walker submitted that the appeal was allowed solely because of the children. That is correct and indeed is the only basis on which the appellant could have succeeded as he must surely realise. He has flouted

the Immigration Rules, shown a disregard for the laws of the country and were it not for the children I have no doubt his appeal would have been dismissed. Parliament has, however, set out its view of the position of qualifying children and what can be reasonably expected of them. The judge followed that approach and reached her decision on that basis. In those circumstances, I do not interfere with her conclusions.

Decision

14. The First-tier Tribunal did not make any material errors of law and the decision to allow the appeal is upheld.
15. **Anonymity**
16. I continue the anonymity order made by the First-tier Tribunal.

Signed

A handwritten signature in black ink, appearing to read 'R. Keir', with a small dot at the end.

Upper Tribunal Judge

Date: 15 August 2018