



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

Appeal Number: PA/04184/2018

THE IMMIGRATION ACTS

**Heard at FIELD HOUSE
On 16th July 2019**

**Decision & Reasons Promulgated
On 24th July 2019**

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL
G A BLACK**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**AGETINA [B]
NO ANONYMITY ORDER MADE**

Claimant

Representation:

For the Appellant: Mr T Lindsay (Home Office Presenting Officer)
For the Claimant: Mr P Blackwood (Counsel)

ERROR OF LAW DECISION AND REASONS

1. This was an error of law hearing. The appellant in this matter is the Secretary of State. I will refer to the parties as the Secretary of State and the Claimant. The Secretary of State appeals against a decision of the First-tier Tribunal (Judge PJM Hollingworth) (FtT) promulgated on 7th February 2019, in which the Claimant's human rights appeal was allowed.
2. The appeal on protection grounds had previously been dismissed by a different Tribunal and following an error of law decision the Upper Tribunal

directed that the human rights claim was remitted to the FtT for new fact finding which was the purpose of the appeal hearing before FTJ Hollingworth. **Devaseelan** principles applied.

Background

3. The Claimant is a citizen of Albania. She has a relationship with her partner Mr [L]. They have one child and at the time of the hearing the Claimant was pregnant with their second child. Mr [L] is an Albania citizen but he entered the UK when he was 17 years old having left Albania when he was aged 13 years. The FtT considered Article 8 outside of the Rules and found that he had established a strong private life that outweighed the public interest in immigration control for the removal of the Claimant and her child with whom there was family life in the UK.

Grounds of appeal

4. In grounds of appeal the Secretary of State argued that the FtT erred by failing to properly apply section 117B(5) Nationality Immigration & Asylum Act 2002 (as amended) ("2002 Act"), in respect of Mr [L]'s private life. It was argued that insufficient weight was attached to the fact that it had been established when his status was precarious and insufficient reasons were given for the decision.
5. It was further argued that the FtT failed to have regard to **EV** (Philippines) & ors [2014] EWCA Civ 874 and **KO** (Nigeria) v SSHD [2018] UKSC 53 in the assessment of where the best interests of the child lay. The FtT had not assessed this having regard to the "real world". The Claimant had no legal basis to remain in the UK, Mr [L] had lawful leave but his status was un-determined as he was waiting for his application for further leave to be decided, and the child was neither a British citizen nor qualified child.

Permission to appeal

6. Permission to appeal to the Upper Tribunal (UT) was granted by Deputy Upper Tribunal Judge McGeachey on all grounds.

Rule 24 response

7. The Claimant produced a detailed response.

Submissions

8. At the hearing before me Mr Lindsay, representing the Secretary of State, argued that the main ground was the FtT's failure to apply section 117B(5). It was not disputed by the Secretary of State that on the facts the appeal could be allowed. But the FtT had not explained adequately why the appeal was allowed in terms of compelling reasons that outweighed the public interest factors under section 117B(5). The FtT failed to take into account the primary legislation in the proportionality exercise. There was no reason given for why the family could not return together to Albania. Mr [L] would be able to work and support the family

and he had family connections in Albania where he visited yearly. The best interests of the child would be equally met in Albania.

9. In response Mr Blackwood for the Claimant contended that the FtT had considered section 117B factors and the issue of precariousness at [21]. He relied on the detailed Rule 24 response and argued that the challenge amounted to a disagreement with the outcome. The history of the proceedings was relevant to the extent that the FtT was required to determine only the Article 8 issues (it being accepted that the Claimant's family life with her partner could lead to a successful appeal) and the adverse credibility findings in respect of the Claimant made by the previous Tribunal had been maintained [10].
10. Mr Blackwood emphasised that need to find an error of law following **UT (Sri Lanka) v SSHD** [2019] EWCA Civ 1095. The FtT had found a very strong private life existed for Mr [L] and that finding was open to the FtT on the evidence. The FtT gave reasons in support including length of residence, age when he came to the UK and his strong network in the UK and the lack of ties in Albania. The FtT found this was capable of outweighing any weight to be given to section 117B(5).

Discussion and conclusion

11. I have decided that there was no material error in law in the decision of the FtT. The decision shall stand. The Secretary of State's grounds amount to a disagreement with the outcome. I am satisfied that the FtT fully considered all the evidence and properly applied the law. The findings made as to private and family life and proportionality were sustainable on the evidence before the FtT.
12. Mr Lindsay focused on the failure to apply section 117B(5) as the main ground of appeal. I considered that the FtT had clearly shown that it was aware of the precarious status of Mr [L], but concluded that his strong private life was compelling and deserving of recognition over and above the public interest. The FtT referred to his status at the time of the hearing as "3C leave" and to the fact that he was awaiting a decision from the Secretary of State. It was entirely clear that the FtT appreciated that Mr [L]'s leave was discretionary.
13. As to whether or not the FtT had taken a "real world" view, it is clear that it did because it recognised that Mr [L], who was found to be entirely credible, had lived lawfully albeit precariously in the UK for a "substantial" period of time and was granted leave on two previous occasions. The question of weight was a matter for the Tribunal. There was no attempt by the FtT to gloss over matters as shown by the maintaining of the adverse credibility findings in respect of the Claimant. The FtT had also concluded that there were no very significant obstacles to reintegration in Albania [11].

14. The FtT reached the conclusion that there were compelling circumstances so as to justify consideration of Article 8 [12]. The FtT made a self direction on section 117B and clearly stated that it had considered the issue of precariousness in respect of the Claimant and Mr [L] at [21]. The critical factors for the FtT were Mr [L]'s strong private life and the best interests of the child. The FtT at [21] found that it "*would be antithetical to [the child's] best interests for her leave the UK to live in Albania in the circumstances to which I refer...* and which included the finding that Mr [L] would not be in the same position to support his child if the family were to live in Albania (**MA** (Pakistan) v SSHD [2016] EWCA civ 705 paragraphs 56 & 57). Further the FtT considered the strength of the ties in the UK and those in Albania, finding that the latter did not involve any family life element and simply amounted to visits. In so doing the FtT correctly identified the law, made findings on the evidence, engaged in the process to identify the best interests of the child and considered section 117B and public interest.
15. Having regard to the decision as a whole there can be no doubt as to why and how the decision was made by the FtT. As such it required no further explanation or reasons (**MK** (duty to give reasons) Pakistan [2013] UKUT 641 (IAC) and **Shizad** (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC)).

Decision

16. The appeal is dismissed. There is no material error of law disclosed and the decision made by the First-tier Tribunal shall stand.

Signed
18.7.2019

Date

GA Black
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

NO FEE AWARD

Signed
18.7.2019

Date

GA Black

Deputy Judge of the Upper Tribunal