Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2021-001267**

(FtT ref HU/00858/2020)

THE IMMIGRATION ACTS

Heard at George House, Edinburgh	**Decision & Reasons Promulgated**
on 28 September 2022	**on 18 November 2022**

Before

UPPER TRIBUNAL JUDGE MACLEMAN
& DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

WAQAS SHAFIQ

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by RH & Co, Solicitors.
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the continued hearing of an appeal by the Appellant against the decision of First-tier Tribunal Judge Buchanan, promulgated on 04/11/2021, which dismissed the Appellant's appeal on all grounds.

Background

2. The Appellant was born on 01/01/1979 and is a national of Pakistan.

3. On 15/02/2016 the Appellant applied for leave to remain in the UK. On 26/11/2019 the Secretary of State refused the Appellant's application.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Buchanan ("the Judge") dismissed the appeal.

5. Permission to appeal to the Upper Tribunal was granted. By a decision issued on 5 May 2022, which should be read along with this determination, the Upper Tribunal set aside the decision of the FtT.

6. The case now calls before us so that the decision in the appellant's appeal, on article 8 ECHR grounds only, can be remade.

The Hearing

7. The appellant and his partner were present and ready to give evidence. In advance of the hearing the appellant's solicitors produced an inventory of productions containing a statement from the appellant's partner, details of the appellant's family's accommodation, and letters from

   (i) the appellant's partner's uncle, (who provides accommodation),

   (ii) the school attended by the appellant's partner's oldest daughter, and

   (iii) a health visitor.

   Also produced is an expert report from Livia Holden MA. MPhil. PhD.

8. Mr Winter and Mr Diwnycz assisted us by confirming the agreed and updated facts in this case. Mr Diwnycz told us that those facts were not before the respondent when the decision was made in this case and that "in an ideal world" the respondent would have conducted a review of the decision before today's hearing. He did not resist the appeal.

The Relevant Agreed Facts

9. The appellant lives with his partner. They have been in a relationship since 2018. His partner has limited leave to remain in the UK until 15 June 2023 because she has sole parental responsibility for her 7-year-old daughter, who is a British national. The appellant's partner is established on the 10-year route to settlement.

10. The child has no contact with her natural father. The appellant is now *in loco parentis* to that British citizen child.

11. The appellant and his partner have one daughter, born in June 2021, who has leave to remain in the UK in line with her mother.

12. Accommodation is provided to the appellant's family by the appellant's partner's uncle.

13. The British citizen child is now in primary three at a local primary school. Both the appellant and his partner display an active interest in her education.

Unchallenged evidence

14. No challenge is taken to the expert report prepared by Livia Holden MA. MPhil. PhD. Ms Holden sets out her background, experience, and qualifications, before rehearsing her instructions. Ms Holden summarises her understanding of the appellant's immigration history and his family's current circumstances. She then provides a reasoned and referenced analysis of the appellant's family circumstances before reaching her conclusions.

15. Ms Holden's conclusions are that the younger daughter of the appellant and his partner will almost certainly not be registered with NADRA because her parents are not married, and will not be granted entry to Pakistan.

16. Ms Holden concludes that cohabitation of an unmarried couple in Pakistan is illegal, and the appellant and his partner risk prosecution and discrimination in Pakistan. Ms Holden's remaining conclusions relate to the availability of mental health treatment for the appellant's partner in Pakistan, and the limited chances of securing employment for the appellant or his partner in Pakistan.

Analysis

The Immigration Rules

17. It is not argued that the appellant can meet the requirements (other than the "exceptional" requirements) of appendix FM.

18. Ms Holden's expert report goes without challenge. There is no countervailing expert evidence. Ms Holden's conclusion is that the younger daughter will be denied entry to Pakistan, and that the appellant and his partner would face prosecution if they lived together because cohabitation of an unmarried couple in Pakistan is illegal. They will face discrimination from non-state agents.

19. Those conclusions point to very significant obstacles to integration, so that the appellant meets the requirements of paragraph 276 ADE(1) (vi) of the Immigration Rules.

Article 8 ECHR

20. TZ (Pakistan) and PG (India) v The Secretary of State for the Home Department [2018] EWCA Civ 1109 tells us that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1). As the appellant meets the requirements of paragraph 276ADE(1)(vi) of the rules, the respondent's decision must be a breach of the appellant's article 8 rights.

21. The appellant fulfils a parental role to his partner's British citizen child. The appellant's partner and younger daughter have limited leave to remain in the UK, and they are established on the 10-year route to settlement in the UK.

22. We remind ourselves of Section 55 of the Borders, Citizenship and Immigration Act 2009. In ZH (Tanzania) (FC) (Appellant) v Secretary of State for the Home Department (Respondent) [2011] UKSC 4 Lady Hale said that *"Although nationality is not a "trump card" it is of particular importance in assessing the best interests of any child".*

23. The focus in this case shifts to sub-section (6) of Section 117B. Section 117B(6) is in two parts which are conjunctive. Section 117B(6)(a) weighs in favour of the appellant because he has a genuine and subsisting parental relationship with a qualifying child. It is Section 117B(6)(b) which is determinative of this case.

24. Both children would be distressed and disadvantaged if their parents were to be separated. It is in a child's best interests to live in family with both parents. We find it unreasonable, under all the circumstances of this case, to separate either child from one of their parents.

25. It is an agreed fact that family life exists. The respondent's decision is an interference with that family life. The burden shifts to the respondent to show that the interference is justified. The respondent no longer resists the argument that this appeal should be allowed on article 8 ECHR grounds because it is in the best interests of the appellant's children that they (and the appellant) should remain in the UK, and because it is not reasonable to expect the children to leave the UK.

26. The appellant succeeds under section 117B(6) of the 2002 Act.

27. In MA (Pakistan) and Others) it was confirmed that if section 117B(6) applies then "*there can be no doubt that section 117B(6) must be read as a self-contained provision in the sense that Parliament has stipulated that where the conditions specified in the sub-section are satisfied, the public interest will not justify removal.*"

28. Because the simple wording of section 117B(6) of the 2002 Act weighs in the appellant's favour, we find that the public interest does

not justify removal. That finding leads us to the conclusion that the respondent's decision is a disproportionate interference with the right to respect for article 8 family life.

29. This appeal succeeds on article 8 ECHR grounds.

Decision

30. The decision of the First-tier Tribunal promulgated on 4 November 2021 has already been set aside.

31. We substitute our own decision

32. The appeal is allowed on article 8 Human Rights grounds.

33. No anonymity direction has been requested or made.

P Doyle

5 October 2022
Deputy Upper Tribunal Judge Doyle

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.