



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08361/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 12th December 2017**

**Decision & Reasons Promulgated
On 22nd December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**PK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Popal Counsel instructed by Longfellow solicitors
For the Respondent : Ms Ahmad Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India.
2. These proceedings concern and involve the status and rights of a child. The appellant is a mother of the child and the child is to be treated as a dependant of the appellant. In the circumstances I consider it appropriate to make an anonymity direction.
3. This is an appeal by the appellant against the decision of First-tier Tribunal Judge R Chowdhury promulgated on 7th June 2017 whereby the judge dismissed the appellant's appeal against the decision of the Secretary of State for the Home Department. The Secretary of State had refused the appellant asylum, humanitarian protection or relief otherwise on the grounds of Articles 2, 3 and 8 of the ECHR.

4. By a decision of 28th September 2017 Designated First-tier Tribunal Judge McCarthy granted permission to appeal to the Upper Tribunal. Thus the case appeared before me to decide whether there was an error of law in the original decision. In granting leave Judge McCarthy had ruled that the decision in respect of the appellant's protection claim contained no arguable error of law. Leave was limited to consideration of the Article 8 rights of the appellant and her child. Judge McCarthy indicated that it was arguable that there had been no proper consideration of the best interests of the child.

Immigration History/Factual background

5. Originally the appellant had entered the United Kingdom on the 11 February 2011 as a student with a visa valid until 27th November 2012. After an in-time application the appellant's leave was extended with leave valid until 25th August 2014.
6. Allegedly within 3 days of entering the UK in 2011 the appellant met IS and the parties married on the 10th April 2011, that is within two months of entry and meeting.
7. On 17 April 2014 the educational establishment, at which the appellant was studying, had its licence revoked. Subsequent to that on 22 August 2014 the appellant's leave was curtailed.
8. On the 22nd August 2014 the appellant had applied for further leave as a student. That application was refused on 30 October 2014 as the appellant could not meet the maintenance requirements. On 4 November 2014 the appellant lodged an appeal.
9. On 12 June 2015 the appellant gave birth to her daughter.
10. On 26 June 2015 the appellant made an application for leave to remain in the United Kingdom under Article 8 with IS and her daughter as dependants. That application was rejected as void as there was an ongoing appeal against the refusal of the previous application as a student. [The case of DA (Section 3C - meaning and effect) Ghana [2007] UKAIT00043 is relevant in that it rules that only one application can be pursued whilst leave is extended by operation of 3C-see also 3C(4)].
11. On 9 November the appellant withdrew her appeal against the refusal of her student application. At that stage her Section 3C leave would have come to an end.
12. On 20 December 2015 the appellant's marriage broke down.
13. On 5 January 2016 the appellant attended at the Asylum Screening Unit in Croydon. On 1 February 2016 the appellant made a claim for asylum with her daughter as a dependant. Following an interview the respondent had refused the appellant's application based upon asylum, humanitarian protection and Article 2 and 3 and also refused the appellant relief on the grounds of Article 8 by decision dated 28 July 2016. The appellant appealed against that decision.
14. As stated the appeal was heard by First-tier Tribunal Judge R Chowdhury. Who dismissed the appeal on all grounds.

15. The appellant has sought to appeal against that decision. In granting leave the Designated First-tier Tribunal Judge found that the grounds set out with regard to asylum were not made out. In dismissing the application on asylum Judge McCarthy indicated that the ground asked the judge to give weight to mere speculation rather than acting upon the evidence. In refusing the application on the protection issues Judge McCarthy was satisfied that cogent reasons had been given justifying the finding that the appellant was not entitled to asylum.
16. However Designated First-tier Tribunal Judge McCarthy indicated that there was an arguable case in respect of the Article 8 rights of the family in that it was arguable that the judge had failed to take account of the best interests of the child. Accordingly leave was limited to Article 8.

The hearing

17. The representative for the appellant sought to raise a number of matters during the course of the hearing, which issues had not been raised before the First-tier Tribunal or in the application for leave.
18. The appellant's representative sought to argue that there had been an error because in paragraph 62 of the decision reference had been made to the appellant's status as being precarious and thereafter unlawful. The representative claimed that the appellant had not been unlawfully in the UK. As is clear from the history set out above, the appellant status was originally precarious but her status came to an end with the withdrawal of her appeal. At that point she had no leave to be in the United Kingdom was unlawfully in the United Kingdom. However no apparent difference has been identified arising out of the distinction between precarious and unlawful.
19. The appellant's representative also sought to advance an argument on the basis of the case of MK [2017] EWHC 1365. It was sought to be argued that the daughter of the appellant was stateless and as such was entitled to British citizenship. If the child is a British citizenship the submission was that the child could not be removed from the United Kingdom.
20. In the first instance that was not a ground was argued before the First-tier Tribunal and was not a ground upon which permission was granted. It is difficult to criticise the judge for failing to take a point that had not been put before him to be determined.
21. No evidence had been submitted with regard to the status of the child, whether the child had been registered with the Indian embassy or otherwise. It was therefore not an issue that the judge needed to make a ruling upon and he cannot be criticised where the issue was not raised and there was no evidence about it.
22. In any event the case of MK was related to whether or not the refusal of British citizenship to a child was lawful in the circumstances. That is not the case here. No application has ever been made for the child to be registered as a British citizen. The issue in the present case is whether or not it would be reasonable for the child to be returned to India and what the best interests of the child were. The appellant's representative took issue that the conclusion by the judge that the child could be returned India was not made out because the child was not a citizen of India. Without the evidence and the issue being raised the judge was not required to deal with the

issue. It was not for the judge to guess whether the child had been registered with the Indian Embassy.

23. The principal issue relates to the article 8 rights of the appellant and the child and whether the judge has taken account of best interests of the child. I would note that the child was born in June 2014. The child is not a British citizen and has not been in the United Kingdom 7 years. Given the age of the child the child has not started education.
24. Within the evidence submitted by the appellant the child is referred to on occasions. At paragraph 13 of the appellant's statement she refers to the fact that she asked her former husband to help her look after the child and he became furious. In paragraph 16 she refers to the fact that she was seeking justice for herself and her child. In paragraph 17 she refers to the fact that she had to be taken to hospital and her child went with her as a result of the beating she had received from her ex-husband. She has referred to the fact in paragraph 19 that they went to a refuge. However other than that there is little by way of reference to the needs of the child or the interests of the child. The whole life of the child is centred around her mother.
25. In respect of the mother it was noted at paragraph 53 that she enjoyed the support of her brother. Given the fact that she had postgraduate qualifications from the United Kingdom the judge was satisfied that the mother would be in an advantageous economic position. In paragraph 55 the judge noted that the appellant and her daughter lived together. As far as the evidence was concerned, the appellant and her daughter would be removed together. In the light of that and given the age of the child and the child circumstances and the fact that they would have support from family in India it was clear that the best interests of the child were to remain with the mother. In the light of that the judge has made sufficient findings and has dealt with the child in line with the principle that it is important to maintain the integrity of the family.
26. The best interests of the child are clearly to remain with the mother. Whilst the judge has not specifically spelt that out, it is quite clear and evident that the judge was mindful of the age of the child the fact and that the whole life of the child was centred upon the parent. As it had been concluded that the mother had no basis for remaining consideration had to be given as to whether or not the other factors which made it inappropriate to remove the child.
27. On the evidence submitted there were no factors advanced above and beyond claims of the mother to protection which warranted allowing the child to remain in the United Kingdom. There were no medical reasons for the child not to return with the mother and there were no other reasons advanced why the child could not return with mother. It has to be noted that since the separation of the mother from the father, the mother has had sole responsibility for the child.
28. In the circumstances whilst there is an obligation to consider the best interests of the child under section 55 given the circumstances present there was only one conclusion the best interests of the child were to remain in the care of the mother. In the circumstances only one conclusion was capable of being made on the facts was that the best interests of the child were to remain with the mother. Taking that into account I find that there is no material arguable error of law.

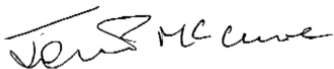
29. I find that there is no material error of law in the decision of the First-tier Tribunal Judge.

Notice of Decision

30. I dismiss the appeal.

31. I do make an anonymity direction

Signed



Deputy Upper Tribunal Judge McClure
December 2017

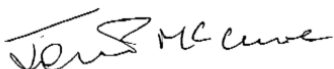
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Direction regarding anonymity

Under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or Court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of their family. This direction applies both to the Secretary of State for the Home Department and to the Appellant. Failure to comply with this direction could lead to contempt of court proceedings.

Signed



Deputy Upper Tribunal Judge McClure
December 2017

Date: 21st