Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: HU/04282/2018

THE IMMIGRATION ACT

Heard at Civil Justice Centre Manchester **Decision & Reasons Promulgated**

On 12th June 2019 **On 17th June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

VJ

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Barrett, instructed by Sabz Solicitors LLP

For the Respondent: Mr McVitie, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge A J Parker promulgated on the 21st February 2019, whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on Article 8 of the ECHR.

2. I have considered whether or not it is appropriate to make an anonymity direction. As the proceedings concern the interests and rights of children I consider it appropriate to make an anonymity direction.

3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Welsh on 15th April 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.

4. The material part of the grant of leave provides:-

> *"The grounds assert, inter alia, that the judge erred in failing to consider and apply section 117B (6) of the Nationality Immigration and Asylum Act 2002. In my view, this point is arguable. It is unclear whether the judge directed his mind to the correct legal test ..."*

5. In the decision at paragraphs 25 to 31 the judge has set out in full the provisions of section 117B of the 2002 Act and considered specific aspects of the section. Subsection (6) contains provisions relating to the relationship of a parent to children and the criteria to be applied as to whether or not the public interest requires the removal of an individual who has a genuine and subsisting parental relationship with a qualifying child.

6. In paragraph 31 of the decision the judge has found that there are qualifying children. The children of the appellant are British citizens. Thereafter in paragraph 33 the judge has indicated that the appellant meets all the requirements, ostensibly of the Rules, with regard to suitability and eligibility including the immigration status of the appellant, save and except for the requirement with regard to relationship. It was for the judge to make a finding as to whether or not there was a genuine and subsisting parental relationship between the appellant and the qualifying children. That was relevant both with regard to Section 117B(6) of the 2002 Act but also with regard to Appendix FM. EX.1.

7. Thereafter taking account of the best interests of the children, in accordance with section 55 of the Borders Citizenship and Immigration Act 2009 and of section 117B of the 2002 Act, the judge was required to determine whether or not it was reasonable to expect the children to leave the United Kingdom. The best interests of the children should be considered as a primary consideration in assessing the facts of the case.

8. It was accepted that the children were British citizens. The case law and consequent policy of the Home Office indicate that it is not reasonable for British citizen children to be expected to leave the United Kingdom.

9. The issue was therefore whether or not there was a genuine and subsisting parental relationship with the children. The judge has made reference to the fact that the appellant had in the past applied for a contact order/family arrangement order but that since that date he and his spouse had reconciled and were now living together. It was for the judge to consider whether or not in the circumstances there was a genuine and subsisting parental relationship between the appellant and the children. It does not appear to me that the judge has made a finding on whether there is a genuine and subsisting parental relationship with the children and whether in the light of that the best interests of the children are being served by removing the appellant.

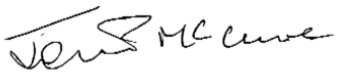
10. The failure to properly assess the relationship of the appellant to the children I find constitutes a material error of law.

11. I asked the respective representatives in light of that what the proper course would be. Whilst Mr Barrett on behalf of the appellant indicated that he would ask that the appeal be determined on the basis of the evidence before the Upper Tribunal, Mr McVitie indicated that the proper course would be for the matter to be remitted back to the First-tier Tribunal for proper findings of fact to be made in respect of the relationship of the appellant to his children.

12. Taking account of all the circumstances I find that the proper course is for this matter to be remitted back to the first-tier for proper findings of fact to be made in respect of the best interests of the children and in respect of the relationship of the appellant to his children. I remit the case for a hearing afresh in the First-tier Tribunal

Notice of Decision

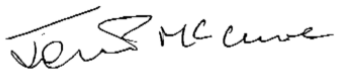
13. I allow the appeal to the extent that it is remitted back to the first-tier Tribunal for hearing afresh.

Signed 

Deputy Upper Tribunal Judge McClure Date 13th June 2019

Direction regarding anonymity- 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 the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings



Signed

Date 2nd July 2018

Deputy Upper Tribunal Judge McClure