Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/16964/2015

THE IMMIGRATION ACTS

Heard at Field House
On 26th September 2017

Decision & Reasons Promulgated
On 5th October 2017

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL
GA BLACK

Between

MR MOHAMMAD IHSAN
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs A Vatish (Counsel)
For the Respondent: Ms J Isherwood (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan. He appeals against the decision made by First-tier Tribunal (Judge Manyarara) ("FTT") promulgated on 2nd December 2016 in which she dismissed the appeal on immigration and human rights grounds. In a decision and reasons dated 25.7.2017 this Tribunal set aside the FTT decision and issued directions for the re making of the decision in relation to EX 1(a) and Section 117B(6) of the Nationality, Immigration & Asylum Act 2002 as amended.

2. The facts as found by the FTT were preserved. It was accepted that the partnership route was not applicable. The appellant otherwise met the requirements of the Rules including finance. I consider the position under the parent route and Ex 1. I heard oral evidence from the appellant, his step son [H] aged 14 years old and his wife. I found the evidence given by the appellant and his son to be reliable and credible. I was satisfied that [H] was able to give detailed and reliable evidence as to his life and circumstances and that he was fully able to give evidence as to his wishes. I found him to be an articulate and intelligent person who understood all the questions when explained clearly to him. I found that I could not rely on the evidence from the appellant's wife as she was in a confused and muddled state possibly because of nerves and anxiety. I found that nothing she said was capable of any evidential value or weight. Even in terms of uncontroversial issues such as the date she moved to her present house, I found that she was unable to give a reliable or accurate answer.

Facts and discussion

3. The appellant married a British citizen in 2011 after coming to the UK as a student. The parties in that relationship have a child [N], born on [ ] 2013. The appellant met his present wife (the sponsor) in 2012 and they married in 2014. The sponsor has three children two of whom were adults and the third, [H], was 14 years of age at the time of the hearing and had ILR but now has naturalised as a British Citizen on 13th June 2017. I find that the appellant has a close and genuine relationship with his step son aged 14 years. I find that over the past 5 years they have developed a father and son relationship and that is a subsisting relationship. The child's biological father died and so the appellant has fulfilled the role of his father since 2013. I place weight on the evidence that the appellant is closely involved in the day to day life of the family and the family members regard him as the father in the family unit. It is not necessary for there to be evidence of any particular dependency or close relationship – there needs to be a genuine and subsisting relationship. I find that the appellant and his son spend time together and the appellant is involved in his education and social activities. The child is currently studying at school and has reached an important and significant stage in his education, namely GCSEs in the summer and it is his intention to continue to study A levels. He is a British citizen as is his mother and he is a qualifying child under section 117B(6) of the 2002 Act as amended. In **Treebhawon** & ors [2015] [19 & 20] the UT found that provision in effect to be free standing in terms of its clear statement that removal would not be in the public interests if section 117B6 applied. In that instance no weight is placed on the other public interest consideration set out in section 117B(4-5). I conclude that section 117B(6) does apply. It would be unreasonable to expect him to uproot to Pakistan at this stage of his life. I have taken into account that he lived in Pakistan until 2013 and has returned for a visit since to see friends and family. However having regard to his age and education I conclude that his best interests lie in his remaining in the UK with his mother and the appellant in the family unit which also includes the sponsor's elderly mother. The suggestion that [H] could be brought up and cared for by his

elder siblings fails to recognised the relationship as between parents and child (**MA (Pakistan) & ors [2016] EWCA Civ 705**). The appellant forms part of the fabric of the family life and without his daily involvement and contribution to the care of his dependents and assistance to enable his wife to work, there would be an interference with family life that would not be proportionate. I also take into account that the appellant has a child from a previous relationship who is also a British citizen and in respect of whom he is currently pursuing an application for access. There was no evidence as to the interest of that child save that in general it would be in the child's interest to see both parents.

Decision

4. I remake the decision and substitute a decision to allow the appellant's appeal on human rights grounds.

Signed Date 4.10.2017

GA Black
Deputy Judge of the Upper Tribunal

No anonymity order made nor requested.

Signed Date 4.10.2017

GA Black
Deputy Judge of the Upper Tribunal