



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

Appeal Number: HU/08580/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 February 2018**

**Decision & Reasons  
Promulgated  
On 19 March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APLEYARD**

**Between**

**VAN [P]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms M. Mac, Solicitor.

For the Respondent: Mr L Tarlow, Home Office Presenting Officer.

**DECISION AND REASONS**

1. The Appellant is a citizen of Vietnam who made application to the Respondent for leave to remain on the basis of private and family life. That application was refused and following a hearing, and in a decision promulgated on 24 April 2017, Judge of the First-tier Tribunal Hussain dismissed the Appellant's appeal.

2. The Appellant sought permission to appeal which was granted by Judge of the First-tier Tribunal Alis in a decision dated 25 December 2017. His reasons for so granting are:-
  - “1. The appellant seeks permission to appeal, in-time, against a Decision of the First-tier Tribunal Judge Hussain (hereinafter called the Judge) who, in a Decision and Reasons promulgated on April 24, 2017 dismissed the appellant’s appeal against the respondent’s decision to reject his human rights claim.
  2. The grounds of appeal argue the Judge erred because the decision conflicted with the fact the Appellant’s wife and children had leave to remain until March 25, 2018.
  3. The Judge noted the appellant came here unlawfully in May 2010 and began a relationship with Vietnamese woman against this background. She also came here illegally. The Appellant and his partner have two children (born 11/5/2011 and 28/1/2014 respectively) who were not entitled to leave under the Immigration Rules but had discretionary leave outside the Rules.
  4. The grounds take issue with the Judge’s “Razgar” approach and for ignoring the fact his wife and children have discretionary leave and the extent to which the family is settled.
  5. In a brief decision it is arguable the Judge did not fully engage with section 55 of the Borders, Citizenship and Immigration Act 2009 and apply section 117B of the Nationality, Immigration and Asylum Act 2002. Although I give permission to appeal the Appellant should not take that as an indication that the decision would be any different.
  6. Permission to appeal is granted.”
3. Thus the appeal came before me today.
4. Ms Mac relied upon the grounds seeking permission to appeal and emphasised that both the Appellant’s spouse and two children have leave to remain until 25 March 2018. Indeed they now have a further application pending. The grounds then reiterate the Appellant’s case which is, in short, that he should not be denied a private and family he has with his spouse and two children in the United Kingdom. Ms Mac was keen to emphasise that the Judge had materially erred by reason of, at the date of hearing, the Appellant’s spouse and children having leave to remain.
5. Mr Tarlow relied upon the Respondent’s Rule 24 statement and contended that the Judge had come to a decision fully aware of the Appellant having both a spouse and two children in the United Kingdom but was entitled to come to the conclusion that he did finding that the best interests of the children did not “tip the scales” in favour of the Appellant given his conduct and that the Appellant’s partner and children were in the United

Kingdom with discretionary leave and not indefinite leave to remain. Beyond that the Judge was entitled to find that the Appellant can relocate to Vietnam.

6. The Judge's findings are to be found at paragraph 17 to 24 of his decision. He reminded himself of appropriate authority and in particular that of **Razgar -v- Secretary of State for the Home Department [2004] UKHL 27**. He balanced the factors on either side of the scales before coming to a conclusion that was open to be made. Whilst there is no direct reference to Section 55 of the Borders, Citizenship and Immigration Act 2009 and Section 117B of the Nationality, Immigration and Asylum Act 2002 it is plain from any reading of the Judge's decision that the factors therein that he was obliged to take into account have been considered.
7. The grounds are an argument with findings that were open to be made on the totality of the evidence. The Judge has adequately reasoned his decision and come to a conclusion that was open to be made.

### **Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I do not set it aside but order that it shall stand.

The First-tier Tribunal did not make an order in relation to anonymity and I find there is no reason why one should be made today.

No anonymity direction is made.

Signed

Date 16 March 2018.

Deputy Upper Tribunal Judge Appleyard