



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/11018/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**Decision and Reasons  
promulgated**

**On 11 April 2018**

**On 16 April 2018**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**QUAN TRAN VAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr G Brown instructed by Qualified Legal Solutions.

For the Respondent: Mrs Petterson Senior Home Office Presenting Officer.

**ERROR OF LAW FINDING AND REASONS**

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Smith promulgated on the 28 February 2017 in which the Judge dismissed the appellant's appeal against the respondent's refusal of an application for leave to remain in the United Kingdom on the basis of private and/or family life.
2. The appellant is a national of Vietnam who married to a British national with whom he has a child, born on 21 July 2015, who is also a British citizen.
3. The Judge, having analyse the evidence, dismissed the appeal pursuant to article 8 ECHR and the Immigration Rules. Even though

technically there is no ground of appeal any longer under the Rules, it is clear what the Judge was considering was the human rights aspect of the appeal of which the Rules form part. At [32] the Judge makes the following finding:

“32. The maintenance of immigration control is in the public interest. Taking into account all the factors that I have set out above and taking special care to treat the L’s interests as a primary consideration I am satisfied that the decision to refuse the appellant leave to remain in the United Kingdom is a lawful and proportionate decision. The decision properly balances the rights of the appellant, and the rights of the GB and L as protected pursuant to article 8 against the legitimate aim of the government of the United Kingdom in maintaining a fair and robust system of immigration control. For the reasons that I have set out above I have concluded that, taking into account section 117B(6) it would not be unreasonable to expect L or GB to leave the United Kingdom. I am satisfied that the decision to refuse the application is a proportionate and therefore lawful interference with the rights of the appellant, his partner and child.”

4. The Judge was referring to the appellant’s British Citizen child when referring to “L” and to the appellant’s partner who, although born in Vietnam, is a British citizen, when referring to “GB”.
5. The appellant sought permission to appeal which although initially refused by another judge of the First-tier Tribunal was granted on a renewed application by the Upper Tribunal. The judge granting permission writes *“I give permission on each ground but my main concern here is that the Judge’s finding that it is reasonable to expect the Appellants British child to remove to Vietnam is not properly reasoned”*.
6. The Secretary of State conceded the error in her Rule 24 reply of the 17 November 2017 and invited the Upper Tribunal to determine the appeal afresh to consider whether the appellant meets the Immigration Rules or Article 8 ECHR.
7. On the basis of the grounds and respondent’s concession, I find the Judge erred in law in a manner material to the decision to dismiss the appeal and set that decision aside.

## **Discussion**

8. The appellant’s child is a qualifying child as a British national. Section 117B of the Nationality, Immigration and Asylum Act 2002 provides:

**117B Article8: public interest considerations applicable in all cases:**

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

- (a) are less of a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
- (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (4) Little weight should be given to—
- (a) a private life, or
  - (b) a relationship formed with a qualifying partner,
- that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
  - (b) it would not be reasonable to expect the child to leave the United Kingdom.
9. In *R (on the application of MA (Pakistan) and Others) v Upper Tribunal (Immigration and Asylum Chamber) and Another* [2016] EWCA Civ 705 it was held that when considering whether it was reasonable to remove a child from the UK under rule 276ADE(1)(iv) of the Immigration Rules and section 117B(6) of the Nationality, Immigration and Asylum Act 2002, a court or tribunal should not simply focus on the child but should have regard to the wider public interest considerations, including the conduct and immigration history of the parents. It was also confirmed however 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." It was additionally held, however, that the fact that a child had been in the UK for seven years should be given significant weight in the proportionality exercise because of its relevance to determining the nature and strength of the child's best interests and as it established as a starting point that leave should be granted unless there were powerful reasons to the contrary. The Court of Session has approved and followed the approach taken in *MA (Pakistan)* in the case of *SA, SI, SI and TA v SSHD* [2017] CSOH 117.
10. The respondents Appendix FM guidance has also been noted. The current version is dated February 2018.

11. Before the Upper Tribunal it was accepted on the facts disclosed in the evidence that it was not reasonable to expect either the qualifying child or the appellants partner, also a British citizen, to leave the United Kingdom to return with the appellant to live in Vietnam. That evidence includes a detailed report from an Independent Social Worker concerning the best interests of the child.
12. In light of this recognition it was not necessary for there to be a further hearing before the Upper Tribunal, for if the removal of the child in particular from the United Kingdom is not reasonable it cannot be said the decision will be found to be other than a disproportionate interference in the protected rights of the UK citizens, on the facts. It was not made out if the appellant's wife and child remain in the United Kingdom it will be proportionate to expect him to leave the United Kingdom and return to Vietnam which would have the effect of separating this family unit.
13. The Upper Tribunal accordingly substitutes a decision to allow the appeal pursuant to article 8 ECHR.

**Decision**

14. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is allowed.**

Anonymity.

15. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 11 April 2018