



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00875/2018

THE IMMIGRATION ACTS

Heard at Field House
On 8 June 2018

Decision & Reasons Promulgated
On 14 June 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MR BASHARAT RASU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Nadeem, Legal Representative, City Law Immigration LTD
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a citizen of Pakistan, has permission to challenge the decision of Judge Sweet of the First-tier Tribunal (FtT) dismissing his appeal against the decision made by the respondent dated 30 December 2017 refusing his protection claim. The grounds do not challenge the judge's rejection of his protection claim but confine themselves to a criticism of the judge's treatment of his case under s.117B(6) of the NIAA 2002, as set out at paras 53 and 54 of the decision:

"53. Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 states that the public interest does not require the person's removal where the person has a genuine and subsisting relationship with a qualifying

child, and it would not be reasonable to expect the child to leave the UK. I accept that the appellant has a relationship with his nephew, but this is not a parental relationship. He is the uncle of the child and not the parent. His sister, who has indefinite leave to remain in the UK, has access to the support of the state, both for herself and for her son, and does not require the presence of the appellant in order to provide parental support or a parental relationship.

54. I have taken into account the case to which Counsel for the appellant referred me – namely **RK** [2016], but I do not consider that this case provides support for the appellant’s argument that he has parental responsibility in law. He does not have parental responsibility. He is merely the uncle who lives with his sister and nephew and provides assistance – for example taking and collecting him from school and providing childcare if his sister is unwell. He cannot therefore succeed under Appendix FM of the Immigration Rules. Nor do I consider that he can succeed under Article 8 outside the Rules, as there are no exceptional circumstances.”

2. I do not propose to set out my decision in any detail because both representatives agreed with me that there was a plain error in the judge’s decision, namely a failure to understand that s.117B(6)(a) only requires a person to have a “genuine and subsisting parental relationship with a qualifying child” (emphasis added) and that (to cite para 2 of the head note set out in **R (on the application of RK) v SSHD (s.117B(6); “parental relationship”** (1JR) [2016] UKUT 31):

“Whether a person who is not a biological parent is in a ‘parental relationship’ with a child for the purposes of s.117B(6) ...depends on the individual circumstances and whether the role that individual plays establishes that he or she has ‘stepped into the shoes of a parent’.”

3. In para 54 the judge wrongly understood **RK** to require proof of “parental responsibility”. In para 53 the judge simply states that the appellant is not in a parental relationship. Neither of the three reasons given is tenable. The fact that the appellant is an uncle does not preclude him from having a parental relationship with the (British citizen) child (born 19 August 2010). The fact that the child’s mother provides parental support does not preclude a person from having a parental relationship; there is no “sole parent” condition. The fact that the child’s mother has ILR and access to the support of the state are likewise irrelevant to the ability or otherwise of a person to be in a parental relationship for the purposes of s.117B(6).

4. The judge’s patent error in relation to the legal test contained in s.117B(6) was compounded by the fact that he made no findings on the contents of the appellant’s relationship with the child. He accurately records Counsel’s submissions regarding this at para 52:

“52. The core of the appellant’s claim (according to his Counsel) is that of his family relationship with his nephew, R R (born on 19 August 2010). He is the son of his sister, S N, who provided written witness evidence and gave oral evidence at the hearing. She was living in Pakistan until 2010, and married her British citizen husband in 2006. She has separated from her husband due to domestic violence, and the father plays no part in the child’s upbringing. It was submitted on behalf of the appellant that he has a special relationship with his nephew, which effectively amounts to a parental relationship. The child is indeed a qualifying child, as he is a British citizen (subject to production of his passport, which was to be sent after the hearing together with the birth certificate) and has in any event lived in the UK for a continuous period of 7 years”

but then makes no real findings on this submission beyond excluding the appellant definitively.

5. In light of this material error I set aside the judge’s decision.
6. The judge’s decision having failed to make any substantive findings on the s.117B(6) issue I consider the case should be remitted to the FtT (not before Judge Sweet). If the appellant were found to be in a parental relationship for the purposes of s.117B(6) then the tribunal will need to consider the guidance given in **SF and Others** [2017] UKUT 120(IAC). I shall give instructions that the hearing be listed for two hours with an Urdu interpreter on the basis of two witnesses giving oral testimony, the appellant and his sister. Any request to vary these terms should be directed to the FtT.

No anonymity direction is made.

Signed:

Date: 13 June 2018



Dr H H Storey
Judge of the Upper Tribunal