



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

Appeal Number: HU/18689/2019

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice  
Centre  
Via Skype for Business  
On 16 October 2020**

**Decision & Reasons Promulgated**

**On 20 October 2020**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**RD  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Turpin

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Following an initial hearing at Manchester on 7 August 2020, I set aside the decision of the First-tier Tribunal. My reasons were as follows:
2. The appellant was born in 1988 and is a female citizen of Albania. By a decision dated 30 October 2019, the Secretary of State refused the appellant's human rights application to remain in the United Kingdom with her brother and his children. She appealed to the First-tier Tribunal which,

in a decision promulgated on 17 January 2020, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

3. At the initial hearing by Skype for Business at Manchester on 7 August 2020, I told representatives that I intended to set aside the decision of the First-tier Tribunal and gave my reasons. I shall, therefore, be brief.
4. One of the grounds of appeal focuses upon the alleged failure of the judge to consider the application of section 117B(6) of the 2002 Act (as amended). The section provides:

‘(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.’

The appellant is not liable to deportation and lives with children of her partner and with whom she claims to enjoy a genuine and subsisting relationship. Those children are ‘qualifying children’ for the purposes of the Act. However, at [34], whilst the judge discusses section 117B but makes no reference to the provisions of subsection (6). At [32], the judge wrote:

However, what is clear to me from the evidence not least of [a trained social worker and friend of the family], that over the years the children now 14 (twins) and 11 have grown very close to the appellant and further away from their mother. In effect it is suggested that the appellants become their surrogate mother. It is not disputed there is family life between the appellant, her brother and the children. It is reasonable to assume that over the years the appellant has developed a genuine and subsisting relationship with the children. However, she is not the parent of the children but of course there is no suggestion of the children should leave the UK even if the appellant does.

5. What the judge says is factually accurate but she has overlooked the possibility that a ‘parental relationship’ exists between the appellant and the children such that subsection (6) is engaged. In *R (on the application of RK) v Secretary of State for the Home Department (s.117B(6); "parental relationship")* IJR [2016] UKUT 31 (IAC), the Upper Tribunal held;

“1. It is not necessary for an individual to have "parental responsibility" in law for there to exist a parental relationship.

2. Whether a person who is not a biological parent is in a "parental relationship" with a child for the purposes of s.117B(6) of the Nationality, Immigration and Asylum Act 2002 depends on the individual circumstances and whether the role that individual plays establishes he or she has "stepped into the shoes" of a parent.

3. Applying that approach, apart from the situation of split families where relationships between parents have broken down and an actual or de facto step-parent exists, it will be unusual, but not impossible, for more than 2 individuals to have a "parental relationship" with a child. However, the relationships between a child and professional or voluntary carers or family friends are not "parental relationships".

It appears that the judge has moved directly from her finding that the appellant is not the natural parent of the children to a rejection of the application of subsection (6) in its entirety. It may well be the case that, where the natural parent of a child is living in the same jurisdiction and has contact with the child, it may, as the Upper Tribunal noted, be unusual for another non-related adult to have a 'parental relationship' with that child. However, it was, given that the appellant claims that her relationship with the children is 'parental', for the judge to make specific findings as to whether the relationship fell under the statutory provision and if not, why not; the absence of a blood relationship was not, as the judge appears to have thought, determinative. I stress that I do not at this stage say that the relationship does fall within sub-section (6). Indeed, I wish to hear further submissions before re-making the decision in the Upper Tribunal.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. The findings at [23] and [24] are preserved. The only issue in the appeal remains section 117B(6) of the 2002 Act. The Upper Tribunal shall remake the decision at or following a resumed hearing on a date to be fixed.

6. At the resumed hearing at Manchester on 16 October 2020, Mr McVeety, who appeared for the respondent, told me that the Secretary of State accepted that the appellant enjoys a parental relationship with the children and that the children's natural mother does not have any contact with them. He acknowledged that, on the particular facts in this appeal, the respondent's own policies and the operation of section 117B(6) of the 2002 Act do not require the children, who are British citizens, to leave the United Kingdom with the appellant. In the circumstances, there exists no public interest in the appellant's removal.

In the light of Mr McVeety's submissions, with which I agree, I remake the decision and allow the appellant's appeal against the Secretary of State's decision dated 30 October 2019.

### **Notice of Decision**

I remake the decision. I allow the appellant's appeal against the Secretary of State's decision dated 30 October 2019.

Signed

Date 16 October 2020

Upper Tribunal Judge Lane

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.