

The Supreme Court UK

BACKGROUND TO THE APPEALS

Part 5A of the Nationality, Immigration and Asylum Act 2002 (‘the 2002 Act’) is headed ‘Article 8 ECHR: Public Interest Considerations’. Section 117A applies where a court or tribunal needs to determine whether an immigration decision breaches a person’s right to respect for private and family life. In considering the ‘public interest question’ – whether an interference is justified under Article 8(2) – the court must have regard to the considerations listed in section 117B and, in cases concerning the deportation of foreign criminals, to the considerations in section 117C.

A ‘foreign criminal’ is a person who is not a British citizen and who is convicted of an offence in the UK that attracted a sentence of at least 12 months, caused serious harm, or is a persistent offender. Section 117B includes a provision that where a person is not liable to deportation as a foreign criminal, the public interest does not require the person’s removal if that 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. A ‘qualifying child’ is a person under 18 and is a British citizen or has lived in the UK for a continuous period of seven years or more. Section 117C provides that deportation of foreign criminals is in the public interest but, if sentenced to less than four years’ imprisonment, there is an exception where there is a genuine and subsisting parental relationship with a qualifying child, and the effect of deporting the person would be unduly harsh on the child.

Three appellants (KO, IT and NS) argue that when determining whether it is ‘reasonable to expect’ a child to leave the UK, or whether the effect of deportation of a person would be ‘unduly harsh’ on their child, the tribunal¹ is only concerned with the position of the child and not with the conduct of the parents. The respondent argued that both provisions require a balancing exercise, weighing the impact on the child against the wider public interest. The fourth appeal (Pereira, regarding ‘AP’) concerns immigration rule 276ADE(1)(iv), which provides that leave to remain on the grounds of private life should be granted to an applicant who is under 18, has lived continuously in the UK for seven years, and whom it would not be reasonable to expect to leave the UK. AP’s application was refused on the basis that it was reasonable for him to accompany his parents to their country of origin.

JUDGMENT

The Supreme Court unanimously dismisses the appeals

¹ ‘Tribunal’ avser här den instans som tidigare behandlat ärendet