



IAC-FH-NL-V1

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

Appeal Number: IA/43601/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 6 October 2015**

**Decision & Reasons Promulgated
On 9 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NVN

~~(ANONYMITY DIRECTION NOT MADE)~~

Respondent

Representation:

For the Appellant: Mr. T. Wilding, Home Office Presenting Officer

For the Respondent: Mr. A. Eaton, Counsel, instructed by Breytenbachs
Immigration Ltd.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Thanki who allowed NVN's appeal against the Secretary of State's decision to refuse leave to remain on the basis of her rights under Article 8.
2. For the purposes of this decision I shall refer to the Secretary of State as the Respondent and NVN as the Appellant, reflecting their positions as they were before the First-tier Tribunal.

3. Permission was granted on the grounds that it was arguable that the judge failed to resolve a material conflict of fact in respect of paragraph 276ADE, and further that the reasoning in respect of the public interest requirements under Section 117B was inadequate.
4. At the hearing Mr. Wilding stated that there were two specific parts to the grounds of appeal on which he relied, that relating to the lack of consideration under paragraph 276ADE, and the analysis of Article 8. Regarding paragraphs 2 and 3 of the grounds, he made no submissions on these as the adult dependent relative route was not available to the Appellant as she was already in the United Kingdom.
5. I heard submissions from both representatives on these two points. At the hearing I reserved my decision and I set it out here with my reasons.

Error of law decision

6. I find that the decision does not involve the making of a material error of law.
7. The relevant paragraphs in relation to the findings under paragraph 276ADE are as follows. Paragraph [38] states:

“It is clear that she cannot qualify under Appendix FM for family life considerations as she is neither a parent nor has a partner in the UK. She does not satisfy the requirements under private life rights when considering paragraph 276ADE except under paragraph 276ADE(vi) it could be found that there would be very significant obstacles to the Appellant’s integration into the country to which she would have to go if required to leave the UK, that is South Africa. There are a number of issues in considering “very significant obstacles” to her return to South Africa. The first is that she has only distant family and they are either infirm through age or of very modest circumstances who it is claim cannot assist the appellant in South Africa. It is possible that she could be maintained financially from the UK from her parents but the family in South Africa cannot assist her with settlement difficulties upon arrival or support her in maintain her mental health.
8. Paragraph [39] states:

“The other significant matter is whether the appellant is capable of independent life. She has remained a dependant of her parents since her birth and remains so presently. The reason for the current position is that she has been diagnosed suffering from Manic Depression and has a mild form of bi-polar mental health problem. She also had suicidal ideation. She requires her family around her to spot when she has an onset of her depressive episode.”
9. It was submitted by Mr. Wilding that the fact that the judge had said that it “could” be found that there would be very significant obstacles meant that there had been no conclusive assessment. I find that the judge states in paragraph [38] that the Appellant does not satisfy the requirements of paragraph 276ADE “except under paragraph 276ADE(vi)”. I accept that he then states that it “could” be found that there would be very significant obstacles. However he is clear in the first part of this sentence that he finds that she satisfies the requirements of paragraph 276ADE(vi). This is

supported by his decision at paragraph [53] where he states “The ground of appeal in relation to the Immigration Rules is allowed”. The only Immigration Rule that is relevant, and which is considered, is paragraph 276ADE(vi).

10. In paragraphs [38] and [39] the judge gives reasons as to why paragraph 276ADE(vi) applies. He finds first that she would not have support in South Africa, taking into account her family in South Africa. Secondly he finds that she remains the dependant of her parents and so is not capable of independent life. The third reason is her mental health, as she has been diagnosed with manic depression and a mild form of bi-polar.
11. I find that, had the judge stated at the end of paragraph [39] what he states in paragraph [53], it would have been clear that he had allowed the appeal under the immigration rules. While I accept that it could have been better structured so as to indicate before proceeding to consideration of Article 8 outside the immigration rules that the requirements of the immigration rules had already been met, I do not find that this is a material error of law. In paragraph [38] he finds that the Appellant does not satisfy paragraph 276ADE except under paragraph 276ADE(vi). While it could be better worded, it is not possible to read these paragraphs and to deem other than that the judge has allowed her appeal under paragraph 276ADE(vi) giving three distinct reasons. There was no suggestion by the Respondent that the reasons given were not adequate.
12. I find that the consideration of paragraph 276ADE(vi) does not contain an error of law.
13. As the judge allowed the appeal under the immigration rules, it was not necessary to proceed to consider it under Article 8 outside of the immigration rules, and as I have found that there was no error of law in his consideration of paragraph 276ADE(vi), I find that the decision contains no error of law.
14. However, for completeness, I find that the submission by the Respondent that the judge failed to give adequate reasons for allowing the appeal outside of the immigration rules is without merit. The judge deals with Article 8 from paragraphs [40] to [52]. At paragraph [41] he refers to section 117 of the 2002 Act, and lists the factors which he must take into account, including the public interest in maintaining immigration control. He proceeds to find that the Appellant has family life in the United Kingdom, and then proceeds to find that the decision is not proportionate. His consideration under Article 8 outside the immigration rules is reasoned and includes consideration of the relevant factors under section 117B.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

~~No anonymity direction is made.~~

Signed

Date 8 October 2015

Deputy Upper Tribunal Judge Chamberlain