



IAC-FH-CK-V2

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

Appeal Number: IA/01379/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 20 January 2016**

**Decision & Reasons Promulgated
On 10 February 2016**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS SALEHA KHATOON CHOUDHURY
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr I Jarvis, Home Office Presenting Officer

For the Respondent: Ms F Shaw, Counsel instructed by Charles Simmons
Immigration Solicitors

DECISION AND REASONS

1. This is a challenge with permission granted to the decision of First-tier Judge Povey in July last year allowing the appeal of the appellant, Mrs Choudhury, against the respondent's decision refusing her application for leave to remain in the United Kingdom.
2. The Secretary of State challenged the decision on the basis first that the judge had not taken into account the mandatory public interest considerations set out in section 117B of the 2002 Act (amended) and also

argued that the judge had made a finding that the appellant suffers from memory loss despite there being no medical diagnosis to that effect and also was concerned that there was a failure to consider whether there were alternative care arrangements that could be accessed in Bangladesh such as home nursing, and I read the grant of permission as a grant of permission on all grounds whether this is specifically a reference to section 117B or the alternative care provisions matters that featured in the decision of the judge granting permission.

3. To an extent Mr Jarvis has amplified those grounds by an argument that although it was conceded that the appeal could succeed under the Immigration Rules and therefore would fail to be considered outside the Rules there is a context nevertheless provided by the Rules which needed to be taken into account in coming to a decision on such matters as alternative care arrangements.
4. On the other hand Ms Shaw argues that the judge clearly referred to section 117B in the relevant consideration thus far and guided himself on the law at paragraph 16 and at paragraph 20 went on to state that he had given regard to all the evidence both oral and documentary and set out the evidence of the appellant's health conditions and support she receives in the United Kingdom and the lack of support as it was said to be in Bangladesh because her daughter there has health problems which are confirmed although not I think a matter of dispute in any event, and as a consequence the judge concluded that the proposed interference with respect to the appellant's family life was not a proportionate one, bearing in mind the needs that she has.
5. I think that the essential difficulty with this decision is the primary point relied on by the Secretary of State which is the failure to give consideration to the paragraph 117B consideration and it is clear from 117A that these are mandatory matters which have to be taken into account. They cover various issues in respect of which the public interest is said to be satisfied, the ability to speak English, being financially independent, little weight given to private life issues and perhaps that is relevant in this case but I do not think, with respect to Ms Shaw, that it can be said to be an answer to this that the judge referred to the Act in setting out what the relevant law was. He needed to go further and address these issues as, as I say, a mandatory matter in assessing the public interest side of the balance in the proportionality consideration that the judge undertook.
6. To a lesser extent I think there is merit in the further points and that there was no medical evidence as regards the memory loss the judge accepted was the case and there is a lack of detailed consideration about alternative care possibilities that would exist in Bangladesh. But the main reason is, in my view, the failure to address the 117B factors.
7. So I conclude there is a material error of law in this decision and I agree with the submission made that it makes sense in light of the deteriorating

situation of the appellant's health, as Ms Shaw tells me on instructions is the case, that it is appropriate for further evidence to be given and in the circumstances as the decision would have to be remade it is appropriate for the matter to be remitted back to the First-tier Tribunal.

Signed

Date

Upper Tribunal Judge Allen