



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/45537/2014

THE IMMIGRATION ACTS

Heard at Field House
On 4th February 2016

Decision & Reasons Promulgated
On 5th July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

MISS LAUREN GILLIAN GEORGE
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME OFFICE

Respondent

Representation:

For the Appellant: Mr O Adisa of Oasis Solicitors
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision and reasons by First-tier Tribunal Judge Majid promulgated on 16th July 2015 in which he dismissed an appeal against a decision

made by the Secretary of State on 27th October 2014 refusing the appellant's application for leave to remain in the UK.

2. The appellant entered the UK on 11th January 2008. On 30th August 2012 she was granted limited leave to remain in the UK until 30th August 2014 as a Tier 1 Post Study Worker. On 30th August 2014 the appellant applied for leave to remain in the UK on the basis of her private life. The application was refused for the reasons set out in the respondent's decision of 27th October 2014 and that gave rise to the appeal before the First-tier Tribunal Judge.
3. The First-tier Tribunal Judge noted that he was bound to take into account the changes introduced to the Immigration Rules as of 9th July 2012, which materially changed the consideration of Article 8 claims. The Judge found at paragraphs [16] and [17] of his decision that having considered the oral and documentary evidence relied upon by the appellant in light of the requirements set out in the new rules, he was not satisfied that the appellant meets the requirements of the rules.
4. The appellant advances a single ground of appeal. That is, the Judge made a material misdirection of law in that the Judge did not properly consider the public interest considerations set out in **s117B Nationality, Immigration and Asylum Act 2002**. The appellant submits that the Judge failed to have any regard to the factors set out in **s117B** that weigh positively in favour of the appellant. For example, the appellant is able to speak English and the appellant is entirely financially independent. The appellant submits that these are factors that go to the core of the proportionality assessment, but were not considered by the Judge.
5. Permission to appeal was granted by First-tier Tribunal Colyer on 2nd November 2015 noting that it is arguable that the Judge erred in failing to have due regard to public interest considerations and especially the factors mentioned in s117B which may have weighed positively in her favour in a proportionality assessment.

6. The matter comes before me to consider whether or not the decision of First-tier Tribunal Judge Majid involved the making of a material error of law, and if the decision is set aside, to re-make the decision.
7. At the hearing before me, Mr Adisa on behalf of the appellant adopted the ground of appeal. He conceded that the appellant cannot succeed in her application under paragraph 276ADE(1) of the Immigration Rules, but he submits that when considering whether the public interest is served by removal of the appellant from the UK, the Judge should have had regard to all of the public interest considerations that are now set out in s117B of the 2002 Act. Mr Adisa relies upon the decision of the Upper Tribunal in **Forman -v- SSHD [2015] UKUT 00412 (IAC)** and submits it was incumbent upon the Judge to consider the public interest considerations that are now expressly set out in s117B.
8. A written response was submitted on behalf of the respondent under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The respondent opposes the appellant's appeal and in summary the respondent submits that the Judge gave due and relevant consideration to all relevant factors such as the fact that the appellant has not been a financial burden on the state. The respondent contends that the appeal amounts to no more than a disagreement with the adverse outcome of the appeal. It is said that the Judge considered all the evidence that was available to him, and came to a conclusion that was properly open to him based on that evidence.
9. At the hearing before me, Mr Kotas submits that the decision of the Upper Tribunal in **AM (s 117B) Malawi [2015] UKUT 260 (IAC)** establishes that the statutory duty to consider the matters set out in s 117B of the 2002 Act is satisfied if the Tribunal's decision shows that it has had regard to such parts of it as are relevant. In any event, an appellant can obtain no positive right to a grant of leave to remain from either s117B (2) or (3), whatever the degree of his fluency in English, or the strength of his financial resources.

Discussion

10. In Singh & Khalid -v- SSHD [2015] EWCA Civ 74, (principally a decision about which rules applied) Underhill LJ summarised the position vis-à-vis an Article 8 claim in circumstances where an application does not succeed under the rules, generally as follows:-

"It is now settled that the right course in any case where an applicant relies on his or her private or family life is to proceed by considering first whether leave should be granted under the relevant provisions of the new Rules and only if the answer is no to go on to consider article 8 in its unvarnished form (the so-called "two-stage approach"): see the line of cases which includes Izuazu (Article 8 – new rules) [2013] UKUT 45 (IAC) and R (Nagre) v Secretary of State for the Home Department [2013] EWHC 7200 (Admin) to which I will have to refer more fully below. Thus article 8 claims "outside the Rules" are still possible, though the scope for their operation is reduced."

11. At paragraph 66(2) of his judgment, Underhill LJ stated "If the decision-maker's view is straightforwardly that all the Article 8 issues raised have been addressed in determining the claim under the Rules, all that is necessary is, as Sales J says, to say so."
12. The appeal before First-tier Tribunal Judge Majid was dismissed because First-tier Tribunal Judge Majid was not satisfied that the appellant had established that she meets the requirements of paragraph 276ADE(1) of the Immigration Rules. He found at paragraph [10(c)] of his decision that the appellant has all her key family in Trinidad & Tobago. Unsurprisingly, he was not persuaded that the appellant can therefore satisfy the requirement of the immigration rules that there would be very significant obstacles to the appellant's integration into Trinidad & Tobago if she were required to leave the UK.
13. The Judge does not expressly state in his decision that all the Article 8 issues raised, have been addressed in determining the claim under the Rules. To the

extent that the Judge erred in failing to set that out in his decision, in my judgement that does not amount to an error of law that is capable of affecting the outcome of the appeal. There was simply nothing else that was advanced by the appellant that needed to be addressed in a conventional assessment of her Article 8 claim outside the immigration rules. In the circumstances, the Judge was not concerned with an assessment of proportionality in the same way that is required when an appeal is considered on Article 8 grounds outside the rules.

14. In any event, I reject the submission made by Mr. Adisa that the Judge failed to have proper regard to the public interest considerations set out in s117B that weigh in favour of the appellant. As the panel of the Upper Tribunal held in **AM (s117B) Malawi [2015] UKUT 260 (IAC)**, an appellant can obtain no positive right to a grant of leave to remain from either s117B (2) or (3), whatever the degree of his fluency in English, or the strength of his financial resources. The appellant gains no assistance from the decision in **Forman (ss 117A-C considerations) [2015] UKUT 00412 (IAC)** in which it was held that the public interest in firm immigration control is not diluted by the consideration that a person pursuing a claim under Article 8 ECHR has at no time been a financial burden on the state or is self-sufficient or is likely to remain so indefinitely. The significance of these factors is that where they are not present, the public interest is fortified.
15. In my judgement, the decision of the First-tier Tribunal does not contain a material error of law capable of affecting the outcome of the appeal and the appeal is dismissed.

Notice of Decision

16. The appeal is dismissed.

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

17. No application for an anonymity direction was made, and no such direction is made.

Signed

Date: 5th July 2016

Deputy Upper Tribunal Judge Mandalia

**TO THE RESPONDENT
FEE AWARD**

The appeal has been dismissed and there can therefore be no fee award.

Signed

Date: 5th July 2016

Deputy Upper Tribunal Judge Mandalia