



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

Appeal Number: HU/02470/2016

THE IMMIGRATION ACTS

Heard at Field House

On 12 April 2018

**Decision & Reasons
Promulgated
On 17 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MS EVELYN MAY MACDONALD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Turner of Counsel

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

DECISION AND REASONS

1. The appellant is a citizen of Jamaica. She was born on 9 November 1957.
2. She appealed against the respondent's decision to refuse her leave to remain dated 12 January 2016. Judge Metzger (the judge) in a decision dated 8 May 2017 allowed the appeal. The judge took into account a combination of the appellant's lengthy period living here, albeit nearly all of it as an overstayer, the strength of her community ties, her medical condition and the lack of any remaining contact with Jamaica. He found the appellant's removal to Jamaica would be disproportionate.

3. The grounds claim the judge made a material misdirection in law, failed to give adequate reasons for findings on proportionality and made irrational findings. The grounds claim the judge should have first considered the appeal in terms of the appellant's ability to satisfy paragraph 276ADE and then identify what were the compelling circumstances that warranted consideration of Article 8 outside the Rules. There was no analysis under S.117B, merely a referral to the same without any engagement. The claimed inability of the appellant to pay for her medical treatment in Jamaica was not a consideration that would be awarded much weight given medical cases such as **MM (Zimbabwe) [2017] EWCA Civ 797** and **GS (India) [2015] EWCA Civ 40**.
4. Judge Parkes granted permission to appeal on 5 January 2017. He said:

*“4. The judge appears to have treated Article 8 as a freestanding exercise without reference to the Immigration Rules and relevant statutes which set the basis for assessing the public interest. **D** and **N** set the relevant guidance in healthcare cases and for an appellant to succeed under Article 8 it is arguable that rather more than the facts of this case would be required”.*
5. There was no Rule 24 response from the appellant.

Submissions on Error of Law

6. Mr Tufan relied upon the grounds. The judge was obliged to engage with the Immigration Rule and S.117B and failed to do so in a decision which lacked adequate reasoning.
7. Mr Turner accepted that the judge's decision was brief but it was clear that he had both the Rules and S.117B in mind in reaching his findings at [7].

Conclusion on Error of Law

8. **Agyarko [2017] UKSC 11** is instructive in the approach the judge should have adopted. The application had been refused under paragraph 276CE with reference to 276ADE(1)(iii) and (vi) of the Rules. That being the case, the judge's first task was to consider the Rules and give weight to them. He was also obliged to consider the appellant's circumstances under S.117B, public interest considerations applicable in all cases. The judge referred to S.117B but there was no analysis of the same and no reference to or analysis of the Rules.
9. There was no analysis of the appellant's medical condition in terms of her claimed inability to pay for the same in Jamaica nor did the judge take into account the public interest in the appellant accessing medical treatment here to which she was not entitled.
10. The judge referred to close relationships and bonds with people in the United Kingdom but there was no consideration that such relationships were formed when the appellant had no lawful leave to be here.

11. In the circumstances, I find the judge materially misdirected himself in law and failed to adequately reason his decision.

Notice of Decision

12. The making of the decision of the First-tier Tribunal involved a material error of law. I set aside the decision and remit the appeal for a de novo hearing.

No anonymity direction is made.

Signed

Date

12 April 2018

Deputy Upper Tribunal Judge Peart