Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/08209/2017**

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
on 15 March 2018	**on 20 March 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

TING LIN CHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The respondent refused the appellant's asylum, human rights and other claims for reasons explained in her decision dated 15 August 2017.

2. FtT Judge Doyle dismissed the appellant's appeal for reasons explained in his decision promulgated on 6 October 2017.

3. At ¶27 the judge said, "S.117B of the 2002 Act tells me that I can place little weight on a relationship formed while the appellant was in the UK unlawfully".

4. The appeal to the UT is on the ground that the judge erred by failing to recognise that the statutory provision can be overridden by a sufficiently strong case, on the authority of *Rhuppiah v SSHD* [2016] EWCA Civ 803, [2016] 1 WLR 4203. This is said to be material for four reasons which, lightly edited, are as follows:

(i) The FtT failed to make any credibility findings on the evidence of the appellant's partner (Mr Craig) at ¶32. If credible, that would undermine the finding that there was adequate care available from the local authority or other family members. Although it is in the public domain that NHS care is available, it is not within judicial knowledge or within the public domain what specific care is available for those with advanced dementia and where the evidence was that Mr Craig was his wife's carer. There was no finding that Mr Craig's daughters would be able to assist. To suggest that they would was not supported by the evidence.

(ii) There was no, or insufficient, evidence that [Mrs Craig] would be able to receive adequate care from the local authority.

(iii) The FtT erred at ¶28 by relying on [the facts of] a case when each case is fact specific. Although the FtT refers to *Agyarko* the FtT at ¶32-33 failed to assess relevant factors. In expecting the appellant's partner to relocate the relevant factors were: he had lived all his life in the UK; all his family were in the UK; he had no ties in Malaysia; he had accommodation; he would face language issues.

(iv) The FtT erred when finding [the appellant] should return to apply for entry clearance, failing to ask whether there was a sensible reason [to expect her to do so]: *MA (Pakistan) v SSHD* [2010] Imm AR 196. There was no sensible reason where it was not disputed that the relationship was genuine and subsisting.

5. Both parties based their submissions on ¶53 of Rhuppiah:

> Reading section 117A(2)(a) in conjunction with section 117B(5) produces this: "In considering the public interest question, the court or tribunal must have regard to the consideration that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious". That is a normative statement which is less definitive than those given by the other sub-sections in section 117B and section 117C. Although a court or tribunal should have regard to the consideration that little weight should be given to private life established in such circumstances, it is possible without violence to the language to say that such generalised normative guidance may be overridden in an exceptional case by particularly strong features of the private life in question, where it is not appropriate in Article 8 terms to attach only little weight to private life. That is to say, for a case falling within section 117B(5) little weight should be given to private life established in the circumstances specified, but that approach may be overridden where the private life in question has a special and compelling character. Such an interpretation is also necessary to prevent section 117B(5) being applied in a manner which would produce results in some cases which would be incompatible with Article 8, i.e. is necessary to give proper effect to Parliament's intention in Part 5A; and a similar interpretation of section 117B(4) is required, for same reasons. (Mr Byass' own suggestion, that the words "Little weight" in sub-sections 117B(4) and (5) should be read so as to mean "great weight" should be attached to private or family life in an appropriate case seemed to me to be linguistically untenable, although directed to the same outcome of achieving compatibility with Article 8).

6. Having considered the grounds and submissions, I am not persuaded that any error of law is disclosed, such as to require the decision to be set aside and remade.

7. Mr Winter accepted that the FtT had not been referred to *Rhuppiah*. He said that nevertheless this was a matter of law which the judge was bound to take into

account, and that he "wrong footed" himself in the rest of his assessment by taking the statutory provision as absolute.

8. Judges seldom fall into error of law by applying plain words of statute.

9. No doubt the judge, if asked, would have made a specific finding on whether statute was overridden, but that was for the appellant to advance in the first place. There was no point of law so obviously applying to the facts in her favour that the judge should have identified and considered it with no invitation to do so.

10. The relationship between the appellant and Mr Craig began in July 2016, while she was here unlawfully, and they moved in together in January 2017 (in the same household as Mrs Craig). The human rights aspect was raised in course of an asylum claim made after the appellant was served with notice of removal following an enforcement visit to a restaurant where she was working on 6 January 2017. As Mr Matthews pointed out, the relationship fell well short of the terms of the immigration rules, not only as to the appellant's immigration status but also in terms of duration and absence of any evidence that financial requirements might be met. The starting point was weak. In the language of *Rhuppiah*, to override the statutory norm the judge would have had to find an "exceptional case", of "special and compelling character", with "particularly strong features". It is difficult to see that if the judge had been invited to analyse the case in these terms there might have been a different result.

11. Dealing with the points on which it was argued that any error would be material:

    (i) and (ii). This was not a credibility case. The primary facts about family relationships were accepted as advanced. It is within judicial knowledge and the public domain that the UK state provides essential care to its citizens, including those with advanced dementia. Of course, publicly and privately provided care may not be of the same nature or quality, but, as Mr Winter accepted, the burden was on the appellant to prove any special features which might advance her case. The judge accurately pointed out at ¶32 that scant detail was provided. Deficiencies in the evidence went against her not in her favour. (There were, for example, no medical, social work, or other professional reports.)

    (iii). This sub-ground is only insistence and disagreement with the proportionality assessment, reciting obvious features which an experienced judge used to dealing with cases raising such issues could not have overlooked.

    (iv). It was perhaps not helpful to leave the remark hanging that the appellant could apply for entry clearance, but it is true as far as it goes. Whether the appellant might have any application open which carries much prospect of success is unknown on the evidence, but seems doubtful. It is not a case where it appears she might succeed but for the procedural requirement to apply from abroad. There is nothing in this sub-ground which might have led to another outcome.

12. The decision of the First-tier Tribunal shall stand.

13. No anonymity direction has been requested or made.

15 March 2018
Upper Tribunal Judge Macleman