



IAC-FH-NL-V1

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

Appeal Number: IA/28724/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9 September 2015**

**Decision & Reasons Promulgated
On 18 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**GURMIT SINGH
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Miss. E. Savage, Home Office Presenting Officer

For the Respondent: Mr. A. Pretzell, Counsel instructed by Haris Ali & Co
Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of Immigration Judge Bradshaw promulgated on 17 March 2015. Judge Bradshaw allowed Mr. Singh's appeal against the decision to refuse leave to remain outside the immigration rules under Article 8.
2. For the purposes of this decision, I refer to Mr. Singh as the Appellant and to the Secretary of State as the Respondent, reflecting their positions as they were before the First-tier Tribunal.

3. In the grounds of appeal the Respondent submitted first that the judge had failed to have proper regard to section 117B of the Nationality, Immigration and Asylum Act 2002. Secondly, the judge had erred by giving weight to the requirements and formalities necessary to enable the Appellant's partner and his child to travel to India. The grounds state that there was no evidence before the Tribunal to show that they would be prevented from joining the Appellant in India or that there would be undue delay in achieving this.

The First Ground

4. At the hearing the Respondent's representative stated that the judge had not referred to section 117B at all. However it is clear from paragraph [9] of the decision that the judge had referred to sections 117A to D of the 2002 Act. The Respondent's representative accepted this, but submitted that the consideration from paragraph [10] onwards did not properly or adequately deal with the factors under section 117B.
5. The Appellant's representative provided a skeleton argument, which sets out at paragraph [8] how and where the decision shows that the judge had taken account of the issues identified in section 117B. I was referred to paragraph [18] of the decision in relation to the maintenance of immigration control (section 117B(1)), paragraph [13] in relation to the ability to speak English (section 117B(2)), paragraph [11] in relation to financial independence (section 117B(3)) and paragraphs [12] and [19] in relation to the Appellant's relationship (section 117B(4)).
6. In paragraph [9] of the skeleton argument the Appellant's representative submitted that the only criticism that could be levelled at the decision was the fact that the findings were not married up with the relevant subsections. I am mindful of the case of Dube [2015] UKUT 00090 (IAC) where it was held that it is the substance not the form which is relevant in relation to consideration of section 117. In that case section 117B had not been referred to at all. I find that the judge referred to sections 117A to D, and was aware of the need to take them into account. His findings from paragraph [10] onwards show that the issues set out in section 117B have been taken into account. Although the consideration of the issue is not directly referenced to the exact subsection, there is no material error of law as all of the factors set out in section 117B have been considered. I therefore find that, as the judge has properly considered section 117B, there is no merit in the ground that he failed to have proper regard to primary legislation.

The Second Ground

7. The Respondent submitted that the judge had erred in giving weight to the fact that the Appellant's partner and child would have difficulties in accompanying the Appellant to India. The Appellant's representative referred to the case of R (Agyarko & Others v SSHD) [2015] EWCA Civ 440. The ECtHR stated that any national decision-making body should take into

account and assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non-national parent.

8. I was referred to paragraph [15] of the decision where the judge referred to evidence provided by both the Appellant and the Respondent on this issue. “Neither the Appellant not (sic) the Respondent have been able to be definitive in the matter” [15]. At paragraph [22] the judge refers to the uncertainty about the ability of the Appellant’s partner and child to travel to India with him.
9. Given that evidence was provided by both the Appellant and the Respondent relating to the practicality and feasibility of the Appellant’s partner and child accompanying the Appellant to India, I find that the judge was entitled, and required, to take this into account. It was clearly a matter which the Respondent considered relevant given that she provided evidence on this point to the First-tier Tribunal.
10. The grounds state that there was no evidence before the Tribunal to show that the Appellant’s partner and child would be prevented from joining the Appellant in India. I have referred above to the fact that evidence was provided by both the Respondent and the Appellant which the judge found to be inconclusive. I was referred to the evidence from the High Commission of India provided by the Appellant (page 186 of his bundle). This states “If either of the parents hold a foreign nationality other than British nationality, then a letter from the concerned Embassy or Mission of that country stating that the child has not acquired nationality of his/her parent would be required”. This evidence was before the First-tier Tribunal. Evidence was also before the First-tier Tribunal that the Appellant’s child is a citizen of Pakistan. This is acknowledged by the Respondent. The identity documents issued to the Appellant’s partner and child by the Respondent following the grant of asylum indicate that they are both citizens of Pakistan. This evidence was before the judge.
11. It is therefore not correct to state that there was no evidence before the First-tier Tribunal regarding the issue of the practicality and feasibility of the Appellant’s partner and child accompanying him to India. The implication in the grounds that the decision had been taken in a vacuum is without merit.
12. The judge was entitled to find at paragraph [22] that there is uncertainty about the ability of the Appellant’s partner and child to travel to India, given the evidence before him. He was entitled to take this into account. Given the circumstances of the Appellant and his family, this is a relevant factor to be taken into account in consideration of Article 8 outside the immigration rules, and the judge was entitled to consider this and to give weight to it.

Notice of Decision

There is no error of law in the decision of the First-tier Tribunal. The decision stands.

No anonymity direction is made.

Signed

Date 17 September 2015

Deputy Upper Tribunal Judge Chamberlain