



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/49785/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 5<sup>th</sup> February 2015

Decision & Reasons Promulgated  
On 24<sup>th</sup> March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

MR ASHOK KUMAR BHATTI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Rothwell (Counsel)

For the Respondent: Ms J Isherwood (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. On 8<sup>th</sup> November 2013, the Secretary of State decided to refuse to vary the appellant's leave to remain in the United Kingdom and to remove him by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006. His appeal against those decisions was dismissed by First-tier Tribunal Judge Buckwell ("the judge") in a decision and reasons promulgated on 22<sup>nd</sup> September 2014. The appellant relied upon his human rights in his appeal, it being accepted that the requirements of the Immigration Rules ("the rules") were not met. At the heart of his

case lay his relationship with his partner, Sally Ffrench, and the family life claimed to exist between them. Having weighed the evidence, which included evidence of anxiety suffered by Ms Ffrench, the judge concluded that although he had no doubt that the relationship was genuine and currently subsisted the balance to be struck between the competing interests fell in favour of the Secretary of State. He found that it would not be unreasonable to expect the appellant to return to India, from where he and his partner could maintain their relationship (his partner being able to visit if she felt able to do so). The appellant could make an application to return to the United Kingdom from India, in accordance with the rules.

2. An application was made for permission to appeal on the basis of what were described as “errors of fact” amounting to a misdirection by the judge, a failure to attach appropriate weight to evidence and a misdirection on section 117B of the 2002 Act.
3. In particular, it was contended that the judge misdirected himself in relation to or misunderstood the extent of Ms Ffrench’s current anxiety and the appellant’s ability to obtain work in the United Kingdom. He gave insufficient weight to evidence given by Ms Ffrench’s mother regarding Ms Ffrench’s anxiety and reliance upon the appellant. The judge’s assessment of Ms Ffrench’s anxiety as something not attracting great weight in the proportionality assessment was unsustainable. So far as section 117B is concerned, it was contended in the grounds that the judge wrongly applied section 117B(3) and did not make a specific finding upon whether the appellant would be able to earn £18,000 per annum by means of employment. It appeared that the judge wrongly considered and applied section 117B(4), on the apparent basis that the relationship with Ms Ffrench was established at a time when the appellant was in the United Kingdom unlawfully. In fact, the relationship began while he had leave as a student and his leave continued by virtue of section 3C of the Immigration Act 1971. The judge referred to Shahzad [2014] UKUT 85 and Ahmad [2014] EWHC 300 but these concerned private life ties and do not apply to students who have formed a genuine and existing family life. This was made clear by section 117B(5), which applies to those who have formed a private life when their status is precarious. If the judge’s interpretation were correct, no one with limited leave who formed a genuine family life would meet the public interest test and Parliament cannot have intended this.
4. Permission to appeal was granted on 4<sup>th</sup> December 2014. In a Rule 24 response from the Secretary of State, the appeal was opposed. So far as self-sufficiency was concerned, the judge noted a discrepancy in the salary that the appellant might receive in the United Kingdom and was entitled to take that into account. So far as Ms Ffrench’s anxiety was concerned, the Secretary of State submitted that her mother was able and willing to support her, as in the past. The appellant did not meet the requirements of the rules in Appendix FM. The judge carried out a proportionality exercise which was free from error and made findings of fact open to him on the evidence.

## Submissions on Error of Law

5. Ms Rothwell said that the appeal was always an “outside the rules” case. The judge erred when striking the balance in his proportionality assessment. He made errors of fact and placed little weight on relevant evidence on the appellant’s side. When considering the public interest question, he erred in relation to section 117A to D of the 2002 Act.
6. A factual error was made in relation to the appellant’s partner, Ms Sally Ffrench, regarding whether counselling she received had been concluded. In fact, she had moved and Ms Ffrench was registered with a new GP. The judge did not take this into account at paragraphs 38 and 41 of the decision. A second error concerned the future income the appellant might earn. The judge found a discrepancy in this regard, at paragraph 40. The evidence before the First-tier Tribunal included a letter from an employer in the appellant’s bundle at page 52. In the second paragraph of that item, the appellant was described as having been offered a permanent contract, with scope for progression. His current salary was £18,000. The appellant gave evidence and was asked how he saw the future and he indicated, as noted at paragraph 11, that his current salary would go up. The judge made findings about his ability to work, relevant to section 117A to D. He found that the appellant’s claim to be financially self-sufficient was not tested and that a discrepancy existed but this was a misdirection. There was room for the appellant’s salary to increase.
7. Another error concerned Ms Ffrench’s anxiety. Her mother gave evidence, as shown at pages 19 and 20 in the appellant’s first bundle, of the severe harm to her daughter’s health. All three witnesses addressed Ms Ffrench’s mental health. The judge recorded the evidence in paragraphs 12 and 13 of the decision. In his findings, at paragraph 41, he broadly accepted it but concluded that it should not attract great weight. However, all three witnesses gave detailed evidence.
8. The other major ground concerned section 117B of the 2002 Act. The judge dealt with the financial side at paragraph 40 of the decision. The letter from the appellant’s company showed that they were willing to employ him. The appellant had been present in the United Kingdom as a student for some years, having arrived in September 2010. There was a letter from a future employer and payments showing that he was self-sufficient and spoke English. Paragraphs 40 and 41 showed the judge’s analysis, where he took into account section 117A to D. He made findings regarding the development of the relationship during periods of limited leave. However, section 117B(4) was to do with private life and precarious status. This showed a misdirection. The judge accepted that there was family life. When he looked at the appellant’s side, the judge made errors and misdirected himself regarding the public interest question.
9. Ms Isherwood said that the judge had not erred in law and the grounds revealed only a disagreement with his findings. It was accepted that the case fell outside the rules, not least because the appellant’s finances were insufficient. However, the judge properly took into account the fact that the requirements of the rules were not

met. So far as Ms Ffrench's anxiety were concerned, she was seeking full-time employment, having completed her studies. The judge accepted that she had received counselling. Her mother made a witness statement which, at paragraph 2, referred to her daughter having suffered anxiety. The judge did not overlook a letter regarding future employment. As the appellant could not show that he had sufficient finances to meet the requirements of the rules, the judge was entitled to make the assessment he did and to take into account section 117A to D showing that the appellant might be a burden on the tax payer. There might well have been scope for an increase in the appellant's salary but the evidence at the time showed that the requirements of the rules were simply not met. The judge did not overlook the evidence regarding anxiety but it appeared that medical treatment had been concluded by February 2014. That was why Ms Ffrench was seeking employment thereafter. The judge noted the evidence that the appellant's presence relieved Ms Ffrench's anxiety, as her mother's presence and support had previously. Should the anxiety worsen, Ms Ffrench might have to return to her parents again. The judge did not err in his assessment in this context. Nothing was overlooked.

10. The judge was entitled to find a discrepancy regarding the appellant's salary as the evidence did not show that he had any imminent prospect of earning sufficient to meet the rules. The conclusions reached at paragraphs 40 and 41 were, again, open to the judge. He was entitled to take into account Ms Ffrench's anxiety but not give it much weight. The judge acknowledged a degree of dependence by Ms Ffrench on the appellant and took this into account as one of the factors to be weighed. His conclusion that the appeal fell to be dismissed was open to him.
11. In a brief response, Ms Rothwell said that it was conceded that the appellant's income did not reach £18,600 and so it was clear from the outset that the judge was required to consider Article 8 on a freestanding basis. Section 117A to D set out relevant factors relating to the public interest question. The judge appeared to have been confused between the private life and family life factors. The appellant spoke English and had an offer of work. There was no real discrepancy regarding the amount of his earnings. He was present here lawfully and did not seek to make out his case on the basis of private life ties, although the judge may have thought that this was so in the light of his mention of Shahzad. The appellant relied on family life. Overall, the judge misdirected himself on the application of section 117B of the 2002 Act.

### **Conclusion on Error of Law**

12. The decision is extremely thorough, as one would expect from the experienced judge who wrote it. He recorded the documentary evidence before him (at paragraph 7) and summarised the oral evidence given by the appellant, Ms Ffrench and Ms Ffrench's mother. There followed a summary of the submissions made by the experienced representatives present.
13. So far as an error of fact concerning Ms Ffrench's anxiety is concerned, I conclude from a careful reading of the decision that the judge made no error at all. The

assessment at paragraph 39, noting that Ms Ffrench has in the past been prescribed medicines and received counselling but that, as at the date of hearing, she was not taking medicines and her counselling sessions had concluded, was open to him. The contention in the grounds that the judge misdirected himself as to Ms Ffrench's current anxiety is simply not made out. His assessment was carefully made and took into account the evidence of counselling, therapy and medicines and (as made clear in Ms Ffrench's witness statement) the support given by the appellant in this regard.

14. Similarly, the judge took into account the evidence regarding the appellant's earnings and financial circumstances. The letter from his employer (appellant's bundle page 52) showed that his current salary, as at October 2013, was £18,000 per annum. The judge recorded the appellant's evidence that he saw his future in a favourable way and that it would pay well and "would be between £28,000 and £30,000" (paragraph 11 of the decision). He was entitled to observe that any suggestion that the appellant might be financially self-sufficient had not been tested and his mention of a discrepancy in the salary the appellant might receive is, I find, properly read as a comment on the substantial difference between the appellant's current salary and the salary he might obtain in the future. The judge had the appellant's view of his prospects in mind, as is clear from paragraph 11 of the decision.
15. There is no merit in the contention that the judge failed to attach appropriate weight to evidence from Ms Ffrench's mother. Again, the decision shows that he carefully summarised it (at paragraphs 22 and 23) and took it into account in his overall assessment. His finding that Ms Ffrench's anxiety was a modest factor in the proportionality assessment was open to him in the light of the evidence. The weight to be given to particular factors was a matter for him and the grounds fall short of showing any error of law here. The decision shows that the judge's overall conclusion followed an assessment of all the evidence before him and he did not overlook any particular feature.
16. Finally, so far as section 117B of the 2002 Act is concerned, I conclude that the judge did not err or wrongly apply section 117B(3) or (4). So far as the former sub-section is concerned, the decision includes a careful assessment of the appellant's financial circumstances and the judge clearly had regard, in paragraph 40, to the question of financial independence. As noted earlier, he was well aware of the evidence showing the appellant's earnings and the appellant's own view of what those earnings might amount to in the future. Read carefully, paragraphs 40 and 41 of the determination reveal the judge's reasoning and there is no confusion between the private life and family life aspects of the case. There really is nothing to show that he wrongly considered and applied section 117B(4). Rather, the decision shows that he had in mind his duty to "have regard" to the considerations listed in section 117B and to make his own assessment. He did not, I find, misunderstand any salient feature of the case. For example, paragraph 41 shows that the judge was well aware that the relationship with Ms Ffrench began at a time when the appellant was here lawfully, with limited leave.

17. In the grounds, it is contended that the judge's mention of Shahzad and Ahmed shows an error, as these cases concerned the establishment of private life ties. With great respect to the author of the grounds, this is disingenuous. The cases are mentioned in paragraph 35, in the context of the fast developing case law on Article 8 and at the conclusion of that paragraph, the judge directs himself that he should apply the guidance given in Razgar [2004] UKHL 27 and MM (Lebanon) [2014] EWCA Civ 985. There is nothing in the judge's overall assessment, at paragraphs 37 to 41, suggesting any error of law.
18. Finally, the decision contains nothing to suggest that the judge considered that those who have formed a genuine family life while present here with limited leave to remain cannot "fulfil the public interest test", as suggested at paragraph 16 of the grounds. It is clear that the judge maintained a proper focus on the facts of the particular case and made his assessment in the light of the evidence before him.
19. Overall, I conclude that no error of law, still less a material error, has been shown. The judge has given cogent reasons for his conclusion that the appeal fell to be dismissed. The decision of the First-tier Tribunal shall stand.

## DECISION

The decision of the First-tier Tribunal, containing no error of law, shall stand.

## ANONYMITY

There has been no application for anonymity at any stage in these proceedings and I make no direction on this occasion.

Signed

Dated

Deputy Upper Tribunal Judge R C Campbell