



IAC-FH-CK-V1

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

Appeal Number: IA/11741/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 January 2016**

**Decision & Reasons Promulgated  
On 11 February 2016**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**VF**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms N Willocks-Briscoe, Home Office Presenting Officer

For the Respondent: Ms A Cooke, Counsel instructed by Chris & Co Solicitors

**DECISION AND REASONS**

1. This is an appeal brought by the Secretary of State against a judgment of First-tier Tribunal Judge Bowes promulgated on 17 June 2015 in which she allowed the appeal of the appellant, who as a result of an anonymity direction I shall refer to as VF, on human rights grounds whilst dismissing the appeal under the Immigration Rules.
2. VF was born on 2 April 1962 and is a citizen of Jamaica. It is not disputed that she arrived in the United Kingdom in February 2002 with a visit visa lawfully but she overstayed after the expiration of that visa and has

remained in the United Kingdom since that date without leave to remain. On 25 September 2013 VF was served with an IS.151A notice which is the commencement of enforcement action as a person liable to removal.

3. Representations were made by her solicitors that she should be permitted to remain on the basis of Article 8 of the European Convention on Human Rights, which was considered by the Secretary of State and rejected. The appeal before the First-tier Tribunal was an appeal against that immigration decision.
4. There is no need for me to set out the wording of Article 8 ECHR, which is known to all parties, or the relevant Immigration Rules. Needless to say, the appeal under the Rules was refused and there is no cross-appeal by VF challenging that decision, which for the purposes of today's hearing is not a matter before this Tribunal.
5. Although Ms Cooke has in her submissions stressed that the basis of the application and claim made to the First-tier Tribunal was what one could describe as a traditional freestanding Article 8 ECHR claim based upon the existence of family and private life in the United Kingdom and not a case advanced on the basis of the quality of care available for VF's aunt, whom I shall refer to as MM, it is clear from the determination, the facts and the discussions that we have had today that these two issues are inextricably linked and appear to have been the foundation upon which the First-tier Judge found that the decision to remove VF was not proportionate. I find that in including that element the judge did not make a legal error as the senior courts have expressed on numerous occasions, as indeed has this Tribunal, that when assessing the proportionality of a decision it is necessary to consider all relevant facts.
6. VF was found by the First-tier Judge to be a credible witness who gave her evidence in a straightforward manner and that her oral evidence was consistent with the written evidence contained within the bundles before the judge. It is not disputed for example that VF has since 2006 been a live-in carer for her aunt MM where she has provided a number of important services identified in the care report prepared by Eleanor Nursing and Social Care Limited which appeared at Annex C of VF's bundle for the purposes of the hearing.
7. The judge noted that VF had made previous applications to regularise her status under the Carer Concession that was previously set out at Chapter 17 of the respondent's IDIs but at the date of the impugned decision in relation to this matter the Concession had been revoked or rescinded by the Secretary of State. The first of such applications was refused on 8 November 2004 with no right of appeal and a request to reconsider that decision made on 4 June 2010 was also refused by the Secretary of State. At that time, in the reconsideration request, it was stated that VF was caring for her aunt to whom she provided care during the day and night. They lived in the same house. The aunt is wheelchair-bound. The aunt receives direct payments from Social Services that she used to pay the

appellant. Any social care services provided were not sufficient to provide for the aunt although, as the judge notes, the application was refused.

8. The difficulty for the First-tier Tribunal and this Tribunal on the papers that have been made available is that there is no indication of the basis upon which the claim and the request for further submissions to be considered were rejected by the Secretary of State. What is clear and would have been known to the parties and the First-tier Judge is that as VF had no lawful leave to remain and as her attempts to secure status had failed she remained in the United Kingdom unlawfully with there being no evidence that she made any attempt to leave the United Kingdom as she was arguably required to do.
9. It is also the case that there was no evidence before the judge of what arrangements or enquiries had been made in relation to the provision of alternative care as a result of VF's application for leave to remain as carer having been refused. I will deal at this point with an issue raised by Ms Willocks-Briscoe in her submissions that because MM was paying VF a proportion of her carer's allowance VF was in effect reliant upon the public purse and in receipt of public funds. The payments that MM received are payments to which she is lawfully entitled in her own right as a result of her disability. Whilst the source of payment of those funds is likely to be the public purse and it has not been proved otherwise they are not payments made as a result of VF's presence in the United Kingdom but rather as a result of an identified disability requiring payment of the carer's element of the appropriate allowances.
10. It is arguable that as MM is lawfully entitled to receive such payments what MM does with those payments is a matter for her and if she chooses to pay the carer's element to VF as a reward for the work she is doing to help her and meet some of her care needs that that cannot fall within the classification of VF receiving a payment from the public purse or being dependent upon the public purse. It is a private arrangement, a private payment by MM to VF. As indicated during the course of the submissions this is not a matter on which the Tribunal has received detailed legal argument and it may in fact be a matter that if it arises in a suitable case has to be looked at at some point in the future when adequate preparation time has been available.
11. I did refer during the course of the discussions with the advocates to previous authorities in relation to the maintenance requirements under the Immigration Rules pre 9 July 2012 where there was a discussion of similar issue which may be of assistance if this matter ever arises again but which from what I can recollect is in accordance with the observation I have made above.
12. It is also accepted by the judge and not disputed before me today that since 2005 VF has had a relationship with a gentleman I shall refer to as BC. BC, who is a retired Irish citizen living in the United Kingdom, has been diagnosed with an unfortunate medical issue for which it is hoped he

is receiving adequate treatment. It was accepted by the First-tier Judge that this is a genuine relationship and that the structure and the nature of the relationship is in fact impacted upon as a result of the degree of care that VF provides for MM. It is for this reason that VF and BC do not cohabit but they do see each other and spend time together and there is an emotional, mental and financial interaction between them.

13. It was not suggested before the First-tier Judge and is not being suggested today that VF is able to rely upon any rights arising from European law based upon the status of BS as an Irish and therefore European citizen within the United Kingdom. That is not a live matter in this appeal so far as the factual issues are concerned although it is noted in the grounds of appeal, recorded in paragraph 11 of the determination, that one of the challenges raised was that the case should have been considered under the Immigration (EEA) Regulations 2006. I say nothing further in relation to that element as it was not a matter made out before the judge.
14. The judge sets out her findings and conclusions having noted the available evidence and submissions made from paragraph 29 of the determination. In paragraph 30 it is noted that Ms Cooke, the advocate appearing on behalf of VF today and at the First-tier hearing, conceded that the appeal was an appeal as to Article 8 of the ECHR only and although the judge considered the matter under EX.1. of Appendix FM it was not a live issue on the basis of there being any realistic prospect of VF being able to satisfy any requirement of the Immigration Rules such as to entitle her to leave on that basis.
15. The judge dealt with paragraph 276ADE and paragraph 31 and again it is not suggested that the judge's finding that VF could not succeed under the Immigration Rules is one that was arguably not available to the judge. There is no cross-appeal challenging the decision to dismiss the appeal on that basis and it is important to note in 276ADE that the finding was that there were no insurmountable obstacles to VF reintegrating to Jamaica if she was to be returned or returned voluntarily.
16. An issue did arise in the pleadings that I have seen relating to whether the judge was correct in law to consider the matter outside the Immigration Rules by reference to Article 8 ECHR. I will deal with that matter at this point and make it clear in finding that the judge was lawfully entitled and indeed on the facts it is arguable was required in this matter to go on to consider the matter outside the Immigration Rules. This is specifically because the relationship with BC was one that was found could not satisfy the requirements of the Rules but it had within it this additional element of the reason why the relationship was structured in the way it was albeit it could also be argued that that was a matter that would have been properly considered under the Rules and it was accepted and conceded that the requirements of the Rules could not be met.
17. The main reason why it was appropriate for the judge to consider the matter outside the Rules is this interaction between the family and private

life that VF has with MM in the United Kingdom and MM's physical condition and disability and the role that VF plays as a carer. It was not submitted before me today that that is a matter adequately considered within EX.1. of Appendix FM or any other requirement of the Immigration Rules. If it was and it had been shown it had been examined within the Rules and rejected then there may be merit in the argument of saying this is not a matter that needed to be considered twice.

18. As stated, the judge went on to consider the relevant factors. The judge refers to paragraph 5A of the Nationality, Immigration and Asylum Act 2002 at paragraph 34 and sets out the five step approach that judges are encouraged to take under the **Razgar** guidance before moving in paragraph 35 to consider what I shall refer to as **Razgar** 1 in line with the nature of the family and private life that it is claimed exists. The judge examined **Razgar** 2 in paragraph 36 and then from 37 to 39 the judge sets out the finding and reasons in relation to **Razgar** 5 and the proportionality of the decision which led to the appeal being allowed. The Secretary of State challenges that by way of an in time application dated 24 June 2015 in which over six paragraphs various challenges to the determination are set out.

19. Permission to appeal to the Upper Tribunal was granted by a Judge of the First-tier Tribunal, First-tier Tribunal Judge Heynes, on 2 September 2015. It is a short grant but the relevant parts are in paragraphs 2 and 3, which are in the following terms:

"2. The grounds of appeal complain that the judge failed to pay sufficient regard to the public interest and gave insufficient reasons for considering Article 8 outside the Rules",

while the second part of that has no arguable merit so far as these proceedings are concerned.

"3. It is arguable that insufficient weight was given to the public interest amounting to an error of law."

Whilst that is the basis of the grant, if **Robinson** obvious points arise in relation to a determination the Tribunal is entitled of its own merit to consider whether such issues give rise to arguable legal error in relation to a determination.

20. Moving on to the legal structure which the judge should have applied and the relevant legal provisions, as stated, the judge refers to the **Razgar** five step approach and mentions Part 5 of the Nationality, Immigration and Asylum Act 2002. Indeed because they are short I will read out paragraphs 37 to 39, which need to be included in the determination:

"37. As to Part 5 of the Nationality, Immigration and Asylum Act 2002, I have considered that the maintenance of effective immigration control is in the public interest. I have also borne in mind that I should give little weight to any private life established by the appellant whilst she was in the UK unlawfully. However, little weight does not mean that I should not put any weight on such a private life.

38. On balance I find that the decision to remove the appellant would be disproportionate to the legitimate public end to be achieved. The respondent did not dispute the amount of care the appellant gave to MM. Mr Collins said that in the appellant's absence the number of care hours would simply be increased. However, I have no evidence to suggest that this would be the case. I find it unlikely that the same level of care would be provided by the local authority as provided by the appellant. It is reasonable to posit that as she is completely immobile she may have to enter a care home. I find it is unlikely that she would be able to remain in her own home in the absence of the appellant. I note that MM recently had another stroke and the appellant had undertaken special training in peg feeding provided by the hospital.
39. For the reasons set out at paragraphs 33 and 38 I find that the appellant provides an extraordinary but requisite amount of care to MM. The appellant speaks English and has not received public funds. Notwithstanding the fact that most of the appellant's private life would have been established whilst she was in the UK unlawfully, I find that the decision to remove her would have a significant and wholly disproportionate effect on her and on MM. Such interference is not proportionate to the legitimate public end."
21. There is a reference in paragraph 38 to the findings in paragraph 33 to which I was referred by Ms Cooke. At paragraph 33 the judge finds:
- "33. I note the appellant's dedication to the care of MM and that she provides such care on a full-time basis. MM is immobile and depends on the appellant for many tasks of basic living. I accept that carers arranged by the local authority attend to her personal hygiene. In fact it would be difficult for the appellant to manage such tasks on her own because MM can only be moved using a hoist. The appellant attends to MM's feeding needs and to her domestic tasks. I do not doubt that she is also a source of company during the day when MM is unable to move from her chair. I consider that these circumstances are such that there are good reasons for me to consider Article 8 of the ECHR directly."
22. The judge refers in that decision to the provisions of Section 117 of the Nationality, Immigration and Asylum Act 2002, which is to be found at pages 332 to 333 of the ninth edition of Phelan. Before turning to those provisions and the case law of the Tribunal it is necessary to remind ourselves of the historic case law in relation to the question of immigration control weight generally. This is because what the judge was required to do was to undertake an Article 8 assessment in accordance with the **Razgar** principles and look at the balance of the case before her having regard to the Part 5 criteria. What the judge is not required to do is to ignore all previous relevant case law.
23. There are two House of Lords decisions which should have been in the judge's mind, being **Huang and Kashmiri [2007] UKHL 11** and the one the judge did refer to which is **Razgar [2004] UKHL 27**. In **Razgar** Lord Bingham said that decisions taken in the pursuit of the lawful operation of immigration control will be proportionate in all save a small minority of exceptional cases, identified only on a case by case basis.

24. In **SS (Congo) [2015] EWCA Civ 387** at paragraph 29 the Court of Appeal and specifically Lord Justice Richards in his lead judgment stated:
- “It is clear, therefore, that it cannot be maintained as a general proposition that LTR or LTE outside the Immigration Rules should only be granted in exceptional cases. However, in certain specific contexts, a proper application of Article 8 may itself make it clear that the legal test for grant of LTR or LTE outside the Rules should indeed be a test of exceptionality. This has now been identified to be the case, on the basis of the constant jurisprudence of the European Court of Human Rights itself, in relation to applications for LTR outside the Rules on the basis of family life (where no children are involved) established in the United Kingdom at a time when the presence of one or other of the partners was known to be precarious: see **Nagre**, paragraphs 38 to 43, approved by this court in **MF (Nigeria)** at paragraphs 41 and 42.”
25. The Court of Appeal also considered the public interest argument in the case of **R (on the application of Kiarie) and R (on the application of Byndloss) [2015] EWCA Civ 1020** where it was found at paragraphs 38 and 44 that in deciding the issue of proportionality in an Article 8 case the public interest was not a trump card but it was an important consideration in favour of removal.
26. The significance of Section 117 of the 2002 Act, which falls within Part 5 of that Act, is that from 28 July 2014 Section 19 of the Immigration Act 2014 was brought into force that amended the 2002 Act by introducing a new Part 5A which applies where the Tribunal is considering an Article 8 to ECHR issue directly. By virtue of Section 117A in considering the public interest question the Tribunal must in particular have regard (a) in all cases to the considerations listed in Section 117B. SubSection 2 of that Section provides that the public interest question means the question of whether an interference with a person’s right to respect for private and family life is justified under Article 8(2). Section 117A(2) is mandatory and the effect of Section 117 being incorporated into statute is that that statute overrides existing case law.
27. Section 117A(3) confirms that the Tribunal is required to carry out a balancing exercise, in other words the Tribunal cannot just rely on the list of public interest factors as a basis for rejecting a claim but must carry out a balancing exercise where a person’s circumstances engage Article 8(1) to decide whether the proposed interference is proportionate in all the circumstances.
28. Two recent Tribunal decisions are those of **Bossade (ss.117A-D-interrelationship with Rules) [2015] UKUT 415 (IAC)** in which it was held that:
1. For courts and Tribunals, the coming into force of Part 5A of the Nationality, Immigration and Asylum Act 2002 has not altered the need for a two stage approach to Article 8 claims.
  2. Ordinarily a court or Tribunal will, as a first stage, consider an appellant’s Article 8 claim by reference to the Immigration Rules that

set out substantive conditions, without any direct reference to Part 5A considerations. Such considerations have no direct application to Rules of this kind. Part 5A considerations only have direct application at the second stage of the Article 8 analysis. This method of approach does not amount to according priority to the Rules over primary legislation but rather to recognition of their different functions.”

The judge was therefore correct to consider the matter under the Rules but therefore on the facts correct to move on to consider the matter outside the Rules and correct to apply the Part 5A criteria to her consideration of the secondary step.

29. The second stated case is that of **Dube (ss.117A-117D) [2015] UKUT 90 (IAC)** which I do not need to refer to in detail. It is a matter that I am sure both advocates are fully familiar with as they appear regularly in these Tribunals but it sets out and considers the requirement for the judge to take into account a number of considerations in Section 117A to D but which are not an a la carte menu as the Tribunal describes it. But the court must have particular regard when considering an Article 8(2) proportionality assessment to those matters set out in Section 117. The Secretary of State’s case is of course that that is precisely what the judge failed to properly do.
30. In relation to the submission which has been made by Ms Cooke that the case was not advanced on an alternative care basis but rather an Article 8 proportionality matter, as stated earlier, the issue of care and the proportionality of the decision are interlinked and a Tribunal or court is entitled to take into account additional considerations providing they are relevant in the sense that they properly bear on the public interest question, the authority for that being **Forman [2015] UKUT 412 (IAC)**, the case I referred to during the course of submissions when the issue of financial dependency arose for in **Forman** 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.
31. The judge was required to look at the merits of the case by reference to a substantial volume of case law but also the statutory provisions that had been put before her. It was submitted by Ms Cooke that what the judge did in relation to this matter was conduct a proper proportionality assessment. If it is found that the judge had provided a proper proportionality assessment the only ground on which the judge’s findings could be properly challenged are on public law grounds, i.e. that the conclusions the judge reached arise as a result of inadequate consideration of the evidence or perversity or irrationality in the conclusions.
32. Ms Willocks-Briscoe challenged the judge’s approach by reference to the weight that the judge gave to the various factors. The leading case in



relation to weight, or one leading case as there are a number, is that of **SS (Sri Lanka) v Secretary of State for the Home Department [2012] EWCA Civ 155** where the Court of Appeal confirmed the established position that weight was a matter for the judge. What the court did, however, is state that there are two important criteria that must be satisfied. The first is that the judge must be shown to have considered the evidence with the required degree of anxious scrutiny and secondly that the judge must have given adequate reasons in support of the findings made. If either of those two elements are missing then a party may have good grounds for challenging the weight the judge gave to the evidence.

33. The judge records in paragraph 37 of the determination that one of the provisions of Part 5 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) is that little weight should be given to any private life established by VF during the time that she has been in the United Kingdom unlawfully. That is an accurate statement of law. The judge also goes on to state in paragraph 37 “however, little weight does not mean that I should not put any weight on such a private life”, which is in accordance with Tribunal jurisprudence stating that judicial independence cannot be restricted in any way by the specific provisions of Section 117, which, to be fair to the drafter of that statutory provision, does not actually appear to be attempting to say no weight can be attached. The judge was entitled to attach some weight to the private life being relied upon by VF in relation to this appeal.
34. To identify what fell within the private life category it is necessary for us to look at the findings in paragraph 35 of the determination. The reason for that is because the judge made a specific finding that the relationship between VF and MM satisfies the definition of family life recognised by Article 8 ECHR. This is based upon the evidence that the relationship between the two is a longstanding relationship. MM is VF’s aunt and did provide some form of care for VF or had some involvement in her life when VF was a child although the current relationship and dependence since VF has attained her majority appears to have only arisen from 2006.
35. The judge found that the relationship between VF and MM was far in excess of the normal emotional ties and it is arguable that that is a sustainable finding based upon the evidence that was given in relation to the role that VF has in MM’s life. The judge, however, went on to state that, in the alternative, if she was wrong on that point then the relationship between VF and MM would form a part of VF’s private life in the United Kingdom. The relationship with BC is not such that it satisfies the definition of family life but the judge accepted that that formed part of VF’s private life.
36. The judge appears in paragraph 38 to set out a finding that to remove the appellant would be disproportionate and then goes on to give reasons for that finding. I accept that that in itself in terms of the structure of the determination is not arguably wrong or a legal error as there is no basis for finding that a judge must approach a matter in any specific way. It has

not been shown that there is a structural failure in the determination such as the judge had decided that the decision was proportionate and then fished around to try and find reasons to justify that finding.

37. As stated, Ms Cooke in her submissions claimed that this was not a case that was being advanced as would have been the case previously under the carer concession by reference to alternative care arrangements but rather in relation to the family life that existed between VF and MM and I will deal with the findings in relation to that matter first.
38. In paragraph 38 it is recorded that the Secretary of State did not dispute the amount of care that VF gives to MM. It was submitted to the judge that in the appellant's absence the number of care hours would simply be increased although the judge found that there was no evidence to suggest that this would be the case and the judge found that it was unlikely that the same level of care would be provided by the local authority as provided by the appellant. The judge mentions that as MM is immobile it may be that if VF was removed MM would be required to enter a care home. If she entered a care home it is likely that full-time care would be available to meet her needs.
39. It is arguable that the judge appears in paragraph 38 to have applied the wrong test to consideration of the factual elements which was clearly a substantial part of the proportionality findings in relation to MM's ongoing care. The reason the judge had no evidence in connection with the care arrangements that would be put in place if VF was removed from the United Kingdom is because there was no evidence that anybody had bothered to go and make that enquiry or to establish what the alternative provision arrangements would be.
40. Ms Cooke could not explain why such an obvious enquiry had not been made and indeed if it had been made and the Social Services or caring authorities had come back saying that the care provision they would be able to offer was insufficient to meet MM's basic needs so that she did not have adequate care. This may have been a case in which it was argued VF's case would have been substantially strengthened if such evidence existed. Ms Cooke to her credit, however, has confirmed today that the case was not advanced on the basis that there would not be adequate care available for MM if that care had to be provided by other than VF.
41. The fact that VF may be able to provide the best care for MM does not mean that MM cannot be cared for adequately by the local authority. It is not disputed that local authorities are under a duty to put themselves in a position to arrange suitable alternative care for all categories of those for whom they have community care functions. It was known in this case that there has been previous local authority and Social Services involvement as indeed the instruction of Eleanor Nursing and Social Care arises as a result of a referral by the local authority. It would have been straightforward, one would have been anticipated, for a letter to be written to the social

worker asking whether alternative arrangements had been made and if they have not what alternative arrangements could be made.

42. The judge fails to explain in paragraph 38 why it was necessary for MM to receive the gold-plated standard of care that she appears to be currently receiving at the hands of VF. For reasons that I shall refer to shortly this was clearly an important element in the judge's mind. It may be that if VF is removed MM will have to go into residential care but it was not shown that care that could be provided within such a caring environment would not be sufficient to meet all MM's physical and emotional needs. MM has family members in the United Kingdom. Ms Cooke very kindly assisted with their names and summarised their position as recorded in the evidence and although it is accepted that if they have families and lives of their own, employment and social and personal lives, they cannot provide the standard of 'in house' care that VF has provided, that does not mean that VF's removal will mean that MM will effectively be abandoned within the United Kingdom. It is not being suggested that this will be the case.
43. In paragraph 39 the judge finds that VF has provided an extraordinary but requisite amount of care to MM. The basis of the definition of extraordinary is that set out in paragraph 33 and I do not find as an explanation of the sacrifices that VF has made for the purposes of caring for MM this is not an inappropriate description, although VF is the United Kingdom without leave unlawfully and it may be that the arrangement has suited her own situation as much as it suited MM as she would have been unable to obtain accommodation or employment lawfully without the required status in the United Kingdom.
44. In paragraph 39 the judge refers to use of English and not receiving public funds but I have set out the case law and I accept Ms Cooke's submission that the judge does not go on to state that that is a positive factor that should be taken into account, it should in fact be treated as a neutral factor as there has been no arguable reliance on public funds.
45. The core finding is the statement in paragraph 39 by the judge as follows: "I find that the decision to remove [VF, described as 'her'] would have a significant and wholly disproportionate effect on her and on MM." I accept the submissions that have been made by Ms Cooke today that if there is a change in the caring arrangements that involve the removal of VF that in fact it would be a significant change in MM's circumstances but what the judge fails to do in paragraphs 37 and 39 is explained with adequate reasoning why it would be a disproportionate interference by reference to the impact of removing VF and the judge fails within the determination, although accepting that some weight can be put upon a private life, to set out exactly what weight the judge has considered it appropriate to attach to VF's family and private life in the United Kingdom.
46. The statement in the Rules regarding little weight being attached to private life specifically refers to private, I think not family life, but European jurisprudence in cases such as **Y v Russia** and a number of

cases that followed made it clear that so far as the European Court of Human Rights is concerned a Higher Contracting State such as the United Kingdom is fully entitled to place little weight upon a relationship that constitutes family life if it is formed at a time that the parties were aware that their immigration situation is precarious.

47. I therefore find that the judge failed to give adequate reasons for findings made, specifically in relation to the application of Section 177B and in that respect that the Secretary of State's grounds are made out and the determination is set aside.
48. In going on to remake the decision I will start with the relationship between VF and BC, which has been found to be a genuine loving relationship. BC has come to court today to support VF and the Tribunal is very grateful to see his presence as indeed, I am sure, is VF to have him sat next to her during the course of this hearing and particularly the outline judgment I am giving today.
49. The fact of the matter is that notwithstanding the sacrifices that VF has made this is a relationship that has been formed at a time when VF has no right to remain in the United Kingdom. BC is here lawfully and so there is no issue with regard to his status. I have considered whether more than little weight should be attached to that relationship as it could be argued that the relationship may have in fact developed further into cohabitation and marriage but for the sacrifices VF has made caring for MM. Even if that had been the case, when assessing the proportionality of any interference with that relationship under the Article 8 ECHR jurisprudence and considering Section 117B, the proposition would still have been the same namely that as the relationship was formed at a time where one party had no expectation, legitimate or otherwise, that they would be entitled to remain in the United Kingdom little weight should be attached to the relationship. I find the Secretary of State has discharged the burden of proof upon her to show that removal of VF from the United Kingdom, notwithstanding the loss of the private life currently enjoyed with BC, is proportionate on the facts.
50. I take into account two statements that have been made by Ms Willocks-Briscoe which is that if VF is removed and she is able to satisfy an Entry Clearance Officer that she can meet the requirements of the Immigration Rules it maybe that in the future VF could return to the United Kingdom lawfully and that some form of relationship can be maintained between them way of Skype and/or other indirect means.
51. Moving on to the relationship between VF and MM. This is the relationship at the core of the decision that has been made. VF should be commended for the sacrifices that she has made in the care of her aunt. She is not the only family member in the United Kingdom. As stated, there are other family members but it is not suggested that they would be able to provide an identical degree of care to that provided by VF and I accept that.

52. It was submitted by Ms Cooke that VF was providing a service to MM which is one that saves the public purse a considerable amount of money. That is an argument that is in some respects supported by a reading of the personalised care plan prepared by Eleanor Nursing and Social Care dated 9 October 2014. It is a somewhat dated document and does suggest that there will be a six month assessment but no copies of any assessments have been provided. What is clear reading that personalised care plan is that what the professional carers were doing was identifying MM's total needs, identifying which of those needs are in fact met by MM/VF and then setting in place a plan to provide those which VF is unable to meet, such as the fact that due to MM's situation and physical presentation she needs a hoist to lift her out of a bed which requires two persons who also assist her with her personal hygiene as set out in the personalised care plan.
53. It is an obvious submission that if VF was removed from the United Kingdom she could not provide the services for MM that Eleanor Nursing and Social Care identify in the care plan that would therefore have to be provided by others, likely at increased cost to the public purse.
54. Article 8 ECHR, however, does not give a person the right to choose where they wish to live and it is accepted within European jurisprudence that the Higher Contracting States such as the United Kingdom government have a margin of appreciation in relation to how they apply Article 8 ECHR. It is therefore a matter for the Secretary of State and HM government who actually control the public purse as to the weight they give to the fact that there would be increased costs if VF is removed. That in itself does not assist VF when looking at the proportionality of the decision because public policy in relation to the public purse in the Secretary of State's view trumps the fact that there would be increased cost and the need for effective and workable immigration control notwithstanding a slight increase to the public purse is felt by the Secretary of State to be a far more important factor.
55. So far as the relationship between VF and MM is concerned if that was a relationship that had no aspect of care needs based upon MM's situation and was just a relationship between two individuals in the United Kingdom with VF having a dependency on MM because VF has no resources of her own, the weight to be given to it would be little. Whether the decision is proportionate therefore comes back to this issue of MM's needs.
56. I stated earlier by reference to the judge that the level of care that would be provided by the local authority would be not the same as that provided by VF. The test in a child care cases is not that of 'best parenting', but of 'adequate parenting'. In a care case the test is also that of whether adequate care is available and it was not submitted by Ms Cooke that she could advance a case to show that MM's care needs would not be met by adequate care provided in the absence of VF.
57. The input by Social Services and the work that has been undertaken so far suggest that Ms Cooke was right to make that submission as in fact it

appears more likely than not that if VF was removed Social Services or the local authority on the basis of their statutory duties and MM's needs as found to exist would provide adequate care to meet her basic needs. The finding of the judge that there was no evidence to suggest that if VF was removed the number of care hours would be increased is an odd finding and it is clear that once needs have been identified that cannot be met without VF's presence on the basis of the current care arrangements that in fact an increase in care will be required.

58. As stated, I accept that the removal of VF will have an impact upon MM, not only on a physical level, which can be overcome, but also on an emotional and psychological level as a person whom MM has probably come to depend upon to quite a significant degree and who provides companionship for her would be removed but the evidence does not show that such companionship could not be provided by other family members. There is insufficient evidence to prove that the impact upon MM of removing VF from the United Kingdom in relation to her physical or emotional and psychological needs is such to make this decision disproportionate when considering Section 117 and the factors set out therein, European jurisprudence and the accepted facts of this case.
59. Even though VF has provided a valuable role to MM I find that the Secretary of State has discharged the burden of proof upon her to the required standard to show that on the basis of the evidence that was relied upon before the First-tier Tribunal and which was available to this Tribunal the decision to remove is proportionate to the legitimate aim of immigration control being relied upon and for that reason I have to dismiss the appeal.

### **Notice of Decision**

The appeal is dismissed.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Upper Tribunal Judge Hanson