



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

Appeal Number: IA/27170/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22<sup>nd</sup> September 2017**

**Decision & Reasons  
Promulgated  
On 27<sup>th</sup> October 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MR RACHID AMGHAR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms R Popal, Counsel  
For the Respondent: Mr P Nath, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Morocco born on 4<sup>th</sup> March 1987. The Appellant entered the UK on 2<sup>nd</sup> August 2002 with his mother and siblings on a visit visa valid until February 2003. Two subsequent applications in 2003 were rejected by the Secretary of State. The Appellant thereafter became an overstayer and on 18<sup>th</sup> April 2008 the Appellant's submitted an

application for leave to remain in the UK as an overstayer outside the Rules which was rejected on 7<sup>th</sup> May 2008 as no fee was paid. Nothing thereafter seems to have happened until a subsequent application based on compassionate grounds for leave to remain outside the Rules was submitted on 27<sup>th</sup> September 2012 which was refused with no right of appeal on 12<sup>th</sup> October 2013.

2. The Secretary of State on 22<sup>nd</sup> July 2015 made a decision to refuse an application for leave to remain on the grounds that removal would not place the United Kingdom in breach of its obligations under the Human Rights Act 1998 and to give directions under Section 10 of the Immigration and Asylum Act 1999 for removal from the United Kingdom.
3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Anstis sitting at Hatton Cross on 31<sup>st</sup> October 2016. The actual Grounds of Appeal are set out in detail at paragraph 5 of the decision. The Appellant's appeal was dismissed by notice of decision and reasons promulgated on 18<sup>th</sup> November 2016.
4. On 1<sup>st</sup> December 2016 Grounds of Appeal were lodged to the Upper Tribunal. Permission to appeal was refused by Judge of the First-tier Tribunal Page on 22<sup>nd</sup> May 2017. Renewed Grounds of Appeal were lodged on 6<sup>th</sup> June 2017. Those grounds reiterated the original Grounds of Appeal and made further observations at paragraphs 4 to 9 inclusive.
5. On 31<sup>st</sup> July 2017 Upper Tribunal Judge McWilliam granted permission to appeal. Judge McWilliam concluded that it was arguable that the judge did not make adequate findings in respect of the Appellant's evidence of his mother's dependency upon him and that it was arguable that the judge did not make it clear what weight, if any, he attached to this when assessing proportionality. She considered that it was arguable that the conclusions in *Rhuppiah [2016] EWCA Civ 803* were relevant in this case and that it was arguable that the judge had erred in his approach to Section 117(B)(4) in the context of the facts of this case.
6. On 17<sup>th</sup> August 2017 in a detailed response the Secretary of State responded to the Grounds of Appeal under Rule 24. I have given due consideration to that Rule 24 response, in particular paragraphs 3 to 5 inclusive. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Ms Popal. The Secretary of State appears by her Home Office Presenting Officer, Mr Nath.

## **Submissions/Discussion**

7. Ms Popal takes me to her speaking note which she submits is effectively a response to the Rule 24 reply and is, to all intents and purposes, a skeleton argument. She relies upon it as her basic submission in that the First-tier Tribunal Judge erred in applying a narrow approach to the facts relating to the Appellant's private life claim and that applying the Court of Appeal judgment in *Rhuppiah v SSHD [2016] EWCA Civ 803* and that the

concept of precariousness is not an inflexible one leading to the entire rejection of a private life claim where the applicant has no leave or limited leave. She submits the concept of precariousness cannot rationally be applied where the relevant private life claim is that of the Appellant's mother (who is lawfully resident in the UK) and not of the Appellant. Thereafter, Ms Popal submits that the private life claim is based on potential harm to the Appellant's mother if she were deprived of the care provided by the Appellant over a substantial period of time and she refers me to the authorities set out at paragraph 2(iii)-(v) of her speaking note, all of which I have read and given due consideration to. She submits that the judge has failed to engage with the factual matrix of this case and the effect that it would have upon the Appellant's mother and her Article 8 rights and that there has been a failure to consider the proportionality assessment with only very limited findings being made.

8. Mr Nath takes me to the very detailed Rule 24 response, particularly paragraph 3 therein, pointing out that the judge has given due consideration at paragraph 35 to Section 117(B)(4) and has made reference to this at paragraph 35 pointing out, using the words "in this situation", that full weight should be given. The judge was, he submits, correct in noting that whilst the Appellant was a minor when he came to this country, he remained in the UK unlawfully thereafter in breach of immigration restrictions when he was an adult. He refers me to paragraph 34 of the Court of Appeal decision in *Rhuppiah* and the consideration of precariousness and weight, namely:

*"The more that an immigrant should be taken to have understood that their time in the host country would be comparatively short or would be liable to termination, the more the host state is able to say that a fair balance between the rights of the individual and the general public interest in the firm and fair enforcement of immigration controls should come down in favour of removal when the leave expires".*

9. Mr Nath reiterates what is said thereafter in the Rule 24 that it was consequently open to the First-tier Tribunal Judge to apply little weight in the Appellant's circumstances. Further, he asked me to look at the position of the Appellant's mother as set out in detail, he submits, by consideration of paragraphs 30 to 32 of the First-tier Tribunal Judge's decision and that the judge made a balanced and reasoned finding at paragraph 40. He consequently submits that there is no error of law and asked me to dismiss the appeal.
10. Ms Popal responds by saying that part of the time the Appellant was in the UK was as a child and that the precariousness of his position was not of his own making and submits that the judge has carried out the wrong form of assessment having considered paragraphs 36 to 40 and that the error of law is to be found in paragraph 37, which is the finding and conclusion made by the judge. She submits that it is necessary to give weight to the Appellant's private life and that the judge has failed to consider the impact

upon the Appellant's mother and the fact that the Appellant has been in the UK since he was a minor.

11. In brief response Mr Nath reminds me that this is not the mother's application commenting that at paragraph 35 the judge does not say that he will not consider private life and that he is at liberty to make whatever weight conclusions that he wants providing they are reasoned which he submits they are. He asked me to find that there are no material errors of law and to dismiss the appeal.

## **The Law**

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings on Error of Law**

14. The contention made by Ms Popal in this matter is that the judge has erred in concluding that the Respondent's decision was a proportionate means of achieving the public interest in effective immigration control, both in respect of the Appellant's family and private life and when the two are taken in combination. I do not agree with that submission. This is a judge who has given very careful consideration to the issues. I agree with the view effectively expressed by Judge Page when he refuses permission, namely that what is being contended is that the judge has erred in law essentially by dismissing the appeal. The principal argument is purely one of disagreement. This is a judge who reached conclusions on the evidence and such conclusions were adequately reasoned. As Mr Nath has submitted this is not the mother's application. It does not sit well for Ms Popal to predicate her argument on the fact that the Appellant was a

minor at the time that he initially overstayed. That concession is accepted by the First-tier Tribunal Judge. It is the subsequent overstaying as an adult that is given scant consideration by the Appellant's representatives and which was properly and appropriately considered with regard to the weight to be given to the Appellant's private life in the judge's analysis at paragraph 35.

15. Thereafter, the judge goes on to consider at paragraph 36 the question of the Appellant's family life and makes findings therein that he was entitled to. As Mr Nath submits to me it is necessary to read the whole of paragraph 36 in its entirety. The judge has gone on at paragraph 37 to consider quite properly public interest and has set out all the considerations that were appropriate including the position regarding the Appellant's mother at paragraphs 38 and 39. His findings at paragraph 40 are ones that he was entitled to make and whilst the judge makes no specific reference to the Court of Appeal in *Rhuppiah* the general principles set out therein have been applied in this instance. The decision is well reasoned and well constructed. The judge has made findings which he was entitled to having heard the evidence and balanced all the issues. The submissions made by Ms Popal amount to little more than disagreement. In such circumstances the decision contains no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

### **Notice of Decision**

The decision of the First-tier Tribunal Judge discloses no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date 26 October 2017

Deputy Upper Tribunal Judge D N Harris

### **TO THE RESPONDENT FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 26 October 2017

Deputy Upper Tribunal Judge D N Harris