



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

Appeal Number: HU/06041/2017

THE IMMIGRATION ACTS

Heard at Field House

On 11 October 2018

**Decision & Reasons
Promulgated
On 8 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**JABER AHMAD CHOWDHURY
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms. A. Holmes, Home Office Presenting Officer

For the Respondent: Mr. A. Burrett, Counsel, instructed by Lawland Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Froom, promulgated on 22 May 2018, in which he allowed Mr. Chowdhury's appeal against the Secretary of State's decision to refuse leave to remain on human rights grounds.
2. For the purposes of this decision I refer to Mr. Chowdhury as the Appellant, and to the Secretary of State as the Respondent, reflecting their positions as they were before the First-tier Tribunal.

3. Permission to appeal was granted as follows.

“The Judge appears to have allowed the appeal for many of the reasons he found the Immigration Rules were not met. The grounds argue no weight was attached to section 117B of the Nationality, Immigration and Asylum Act 2002. The Judge placed weight on the fact that weight could be attached where private or family life had been established and that this was one of those cases where there were compelling reasons.

The grounds are arguable for the reasons set out in the grounds of appeal in a grant permission on all grounds.”

4. The Appellant attended the hearing. I heard submissions from both representatives following which I reserved my decision.

Error of Law

5. It was submitted in the grounds of appeal that the Judge had not applied the test he was supposed to apply, in particular in relation to section 117A to 117D of the 2002 Act. It was submitted that the Judge erred in allowing the Appellant’s appeal without regard to the public interest factors.

6. In a comprehensive and full decision, the Judge considered all of the factors set out in section 117B. Neither the grounds of appeal, nor the grant of permission, refer to the fact that, as was acknowledged at the hearing in the First-tier Tribunal, the Appellant would meet the requirements of paragraph 276ADE(1)(v) if he were to have made an application at the date of the hearing, although he did not meet these requirements as at the date of the application. This is a significant and weighty factor in any proportionality assessment, which is not acknowledged in the grounds of appeal nor in the grant of permission.

7. The Judge considered the appeal under Article 8 outside the immigration rules, with reference to section 117B, from [35] to [45]. At [38] he states:

“In this case, paragraph 276ADE(1)(v) is not met because the appellant has not made an application meeting the temporal requirement, although he meets the substantive requirements regarding the length of his residence. Suitability has not been placed in issue by the respondent. The decision therefore turns to some extent on the importance of the degree to which the appellant fails to meet the rules.”

8. At [39] he correctly states that “there is no formalised “near-miss” principle, although all the facts have to be taken onto account and considered in context”. At [40] he states that he is bound to have regard to the factors listed in section 117B. He refers to the case of Rhuppiah [2016] EWCA Civ 803, in particular [46]. He states: “However, it was common ground in that case that it was possible to conceive of cases caught by sections 117B(4) and (5) in which a private or family life of an especially strong kind had been established such that it should be accorded great weight.” He refers to [49] and [53] of Rhuppiah and quotes from [54]: “in order to identify an exceptional case in which a

departure from that approach would be justified, compelling reasons would have to be shown". There is no error in this analysis of Rhuppiah.

9. At [41] the Judge turns to consider the factors set out in section 117B. It is not, as submitted at the hearing, in a short and summarised fashion, but in a structured way. He finds that the Appellant speaks English (117B(2)), and that he has not shown he is financially independent (117B(3)). He states "little weight can be given to that private life, according to the statute, because nearly all his time in the UK has been unlawful." He finds that the Appellant has been put in this position by his parents and uncle through no fault of his own.
10. At [42] to [45] the Judge carefully and correctly considers the "conundrum" posed by the Appellant's case. In doing so he properly considers the proportionality of the decision. He balances "the "little weight" which can be given to his private life with the fact that the respondent's own policy would be to grant leave to the appellant if he made a proper application". He is correct in so doing. At [43] he considers whether or not there is a sensible reason to expect the appellant to make a further application.
11. At [44] he considers the matters weighing in the Respondent's favour, and states that he gives them "considerable weight". At [45] he states as follows:

"However, in my judgment, this is one of the cases in which compelling reasons have been shown to justify a finding that the decision is disproportionate in line with the analysis provided in Rhuppiah. That is because the private life which the appellant has been permitted to establish in the UK, now spanning more than half of his life, is of a particularly valuable kind. The appellant has spent all his teenage years here and has completed his secondary education here. He has plainly lost many of his ties with Bangladesh and he has become entirely integrated in the UK. Despite my adverse credibility finding regarding his contact with his family in Bangladesh, there can be no doubt he has become at home in every sense in his uncle's family. I keep in mind that it was not the appellant's decision that he should be brought to the UK in order to obtain a free education here. The responsibility for that lies elsewhere. Notwithstanding the requirement to apply section 117B(iv), I find that these matters render the decision disproportionate."
12. There is no error of law in this assessment. The Judge's analysis is in line with the analysis provided in Rhuppiah. Ms. Holmes stated that she was not going to dwell on Rhuppiah, and made no submissions on this caselaw, but this is precisely the case which the Judge has correctly considered. He was entitled to find that the Appellant's private life was of the "particularly valuable kind", and to give weight to it accordingly. I find there is no merit in the submission made before me that, because he did not have leave to remain, he was not integrated into the United Kingdom. The Appellant was not party to the decision to leave him in the United Kingdom. He is integrated into the United Kingdom by way of the education that he has

received here, and the fact that he has been living here for over half of his life. The Judge was entitled to find at [45] that he was integrated into the United Kingdom.

13. I find that the Judge has not failed to have proper regard to the public interest requirements under section 117B as was asserted in the grounds. He has dealt properly with the weight to be given to the immigration control but, as he points out, at the date of the decision the Appellant met the requirements of paragraph 276ADE(1)(v). I accept Mr. Burrett's submission that paragraph 276ADE(1)(v) is not concerned with the connection which an individual may have with his country of origin, but recognises the ties which will have been placed down in the United Kingdom in the formative years of youth. It provides that leave shall be granted where an individual has spent over half of his life in the United Kingdom and is aged between 18 and 25. There is no need to consider how easy or otherwise it would be for that individual to return to his home country. The rule acknowledges that ties which are built up in this stage of life are important, and have a different nature to those established later.
14. There was no dispute, either in the First-tier Tribunal or before me, that the Appellant would have met paragraph 276ADE(1)(v). As I stated above, there was no acknowledgment of this in the grounds of appeal. The Respondent accepted that the Appellant met the suitability requirements. Mr. Burrett submitted that, given that the Appellant met the suitability requirements, and the immigration rule itself, it was difficult to see how the Respondent could then say that it was in the public interest to deny the Appellant leave to remain. However, the Judge did not consider the Appellant's case purely on that basis, but carefully and properly considered all of the factors, in particular whether the Appellant met the requirements of paragraph 276ADE(1)(vi). The fact that he found that the Appellant did not meet paragraph 276ADE(1)(vi) did not prevent him from attaching weight to the fact that, as at the date of the hearing, the relevant date for consideration of Article 8, he would have met the requirements of paragraph 276ADE(1)(v).
15. It is also significant to note that the Judge did not find that the Appellant himself was dishonest, but rather it was the older family members who had connived in him being left in the United Kingdom. He finds at [30] that the Appellant was blameless for how the situation came about, which he repeats at [45]. He was aware that there was no action on the part of the Appellant to circumvent immigration control.
16. This was not an appeal which rested on whether there would be "very significant obstacles" to the Appellant's integration into Bangladesh, but rather the ties established in the United Kingdom. It is correct at law that significant weight is to be given to the fact that an appellant meets the requirements of the immigration rules when carrying out a proportionality

assessment, and the Judge gave significant weight to that factor, as he was entitled to do.

17. The Judge conducted a proper and fair proportionality assessment, balancing the public interest of maintaining effective immigration control against the private life of the Appellant. He properly attached weight to the fact that the Appellant would meet the requirements of the immigration rules due to the private life he had established in the United Kingdom. There is no error of law in his decision.

Notice of Decision

18. The decision of the First-tier Tribunal does not involve the making of a material error of law and I do not set it aside. The decision of the First-tier Tribunal stands.
19. No anonymity direction is made.

Signed

Date 30 October 2018

Deputy Upper Tribunal Judge Chamberlain