



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

Appeal Number: HU/01222/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 12 February 2020**

**Decision & Reasons
Promulgated
On 3 March 2020**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**REDWANUL [H]
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms R Bassi, Senior Home Office Presenting Officer

For the Respondent: Mr G Mavrontonis, Counsel, instructed by Farani Taylor Solicitors

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant (hereafter, “the Secretary of State”) against the decision of First-tier Tribunal Judge Watson (hereafter, “the judge”), promulgated on 10 September 2019, allowing the appeal of Mr [H] (hereafter, “the Claimant”) against the Secretary of State’s decision of 8 January 2019, refusing his human rights claims. The Claimant’s appeal was linked together with those of his mother and father (HU/01216/2019)

and HU/01219/2019). Their appeals were dismissed by the judge and there has been no application for permission to appeal against that aspect of her decision.

2. The Claimant, a national of Bangladesh, was born on 6 July 2000. He arrived together with his mother on 14 September 2011 at the age of 11 in order to join his father who was already in this country as a Tier 4 Student. In due course an application for an extension of the family unit's leave to remain was refused and a subsequent appeal dismissed on 6 March 2013. The human rights claim leading to the decision now under appeal was made on 11 May 2018.

The decision of the First-tier Tribunal

3. For reasons clearly expressed, the judge concluded that the Claimant's parents could not succeed in respect of their Article 8 claims, both within the context of the relevant Immigration Rules (hereafter, "the Rules") and without.
4. In respect of the Claimant, the judge concluded on the basis of reasons set out in at [27] that there would not be very significant obstacles to his reintegration into Bangladeshi society. The judge moved on to consider whether there were any "exceptional circumstances" under GEN.3.2 of Appendix FM to the Rules. At [37]-[46] the judge worked her way through the mandatory considerations set out under section 117B of the Nationality, Immigration and Asylum Act 2002, as amended, and concluded that:
 - i. the maintenance of immigration control was in the public interest;
 - ii. the Claimant was fluent in English and this constituted a neutral factor;
 - iii. whilst the Claimant had not had recourse to benefits as such, he had accessed free education and received treatment on the NHS and these facts counted against him;
 - iv. the "little weight" criteria contained in sub-sections (4) and (5) of section 117B of the 2002 Act did not mandate such a reduction in weight to an individual's private life was in all circumstances. As the judge put it, "Little weight is not the same as no weight", with reference to the Court of Appeal's judgment in Rhuppiah [2016] EWCA Civ 803 (it is of course the judgment of the Supreme Court in that case that one should refer to, but that makes no material difference in the present case).
5. In concluding that more weight should be attached to the Claimant's private life in light of the circumstances as a whole, the judge relied on a particular feature of the case, namely that the Claimant had come to this country at the age of 11 and had remained here during what were described in [32] as "very important formative years" of his life. In

addition, the fact that a great majority of this time was spent as an overstayer was not the Claimant's fault and he should not be blamed for the conduct of his parents (with reference to the general proposition set out in KO (Nigeria) [2018] UKSC 53. On this basis, and within the context of GEN.3.2, the judge concluded that the decision under appeal was "unduly harsh" with regard to the Claimant. The appeal was allowed on the basis of the private life Article 8 claim.

The grounds of appeal and grant of permission

6. The Secretary of State's grounds of appeal are set out under a heading that the judge had made a "material misdirection of law on any material matter". Despite this title, the substance of the grounds themselves do not in truth assert such a misdirection, but instead state that the judge: "failed to identify" any exceptional circumstances in the case; "failed to correctly undertake the proportionality balancing exercise in line with the statutory considerations outlined in section 117B" of the 2002 Act; "incorrectly placed significant weight on the Appellant's [as the Claimant then was] private life"; and, finally, that there were no "exceptional features outlined by the judge" that would outweigh the public interest.
7. Permission was granted by First-tier Tribunal Judge O'Brien on 13 December 2019. In [3] of his decision, Judge O'Brien categorised the Secretary of State's challenge as being one relating to inadequate reasons rather than a misdirection of law, a failure to take matters into account, or a failure to make findings.

The hearing

8. Ms Bassi confirmed that the Secretary of State was not putting forward a perversity challenge. She submitted that the Claimant's age was not an adequate reason in the context of section 117B of the 2002 Act. She submitted that the judge had failed to identify the Claimant's age and surrounding circumstances as being an exceptional feature of the case. I was referred to paras 25 and 26 of Miah (section 117B NIAA 2002 - children) [2016] UKUT 131 (IAC), a case which she suggested contained a similar factual matrix to that of the present.
9. Mr Mavrontonis relied on his Rule 24 response. He submitted that the Secretary of State's grounds were unclear and did not in fact assert a reasons challenge. He emphasised the absence of any perversity challenge. He submitted that the judge had gone through the mandatory considerations under section 117B of the 2002 Act with care and her conclusions were sustainable.
10. At the end of the hearing I reserved my decision.

Decision on error of law

11. Having considered the judge's decision as a whole and in the context of the grounds as put forward, I conclude that there are no material errors of law in the judge's decision.
12. The judge correctly directed herself in law in respect of the mandatory considerations under section 117B of the 2002 Act, the possibility of an individual showing exceptional circumstances such as to render a decision disproportionate, and, importantly that in relation to the "little weight" criterion under the 2002 Act, a degree of flexibility is, as it were, built in (see para 49 of Rhuppiah [2018] UKSC 58).
13. When what is said at [45] and [47] is read in conjunction with the finding at [32] concerning the Claimant's age at the time of arrival in the United Kingdom and the period spent in this country thereafter, the judge was in my judgment adequately identifying an exceptional or compelling feature of the case, contrary to what is asserted in the grounds of appeal. The weight attributable to that feature was a matter for the judge. I note in this regard that there is no perversity challenge: in other words, it has not been asserted that no reasonable judge could have placed sufficiently great weight upon this feature so as to render the conclusion reached unsustainable.
14. In respect of Ms Bassi's reliance on Miah, it is worth repeating what has been said on many occasions: real caution must be exercised in attempting to compare the facts of one case to those of another. Cases such as the present are intensely fact-sensitive. Miah does however provide a point of note in terms of the general approach. At para 24, the Upper Tribunal observed that a "child's age and personal circumstances at the commencement of the period under scrutiny and thereafter will be obviously material considerations." That lends support to the conclusions reached by the judge in the present case.
15. Contrary to what is said in the grounds, the judge did conduct a balancing exercise, taking into account the mandatory statutory considerations together with other factors and weighing them up holistically, as she was required to do.
16. The judge's decision may well be generous, but that does not of itself render it legally erroneous. In my judgment the approach adopted by the judge, the conclusions reached, and the reasons set out in support thereof, are sustainable and that the Secretary of State's appeal to the Upper Tribunal must be dismissed.

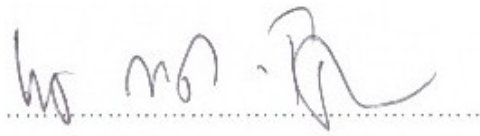
Notice of Decision

The decision of the First-tier Tribunal does not contain errors of law.

The decision of the First-tier Tribunal shall stand.

The Secretary of State's appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

A handwritten signature in black ink, appearing to read 'Norton-Taylor', written over a horizontal dotted line.

Signed

Date: 18 February 2020

Upper Tribunal Judge Norton-Taylor