



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/53272/2013

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Field House

**Determination
Promulgated**

On: 21 November 2014

**On: 27 November
2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

ANGELLA MAUREEN SIMPSON

(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr M Ume-Ezeoke, Counsel by J F Law

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the Respondent against the determination of First-tier Tribunal Judge Khawar in which he allowed the appeal of the Appellant, a citizen of Jamaica, against the Respondent's decision to refuse to leave to remain on human rights grounds as the unmarried partner of a British Citizen.

2. The application under appeal was made on 27 May 2011 and was refused by reference to paragraph 276ADE and Appendix FM of the Immigration Rules (HC395) on 26 November 2013. The Appellant exercised her right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Khawar on 31 July 2014 and was allowed the Judge finding that the Respondent's decision was in breach of the Appellant's protected rights under Article 8 ECHR.
3. The Respondent applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge P J M Hollingworth on 9 October 2014 in the following terms
 1. An arguable error of law has arisen in relation to the application of Section 117B in respect of the weight to be attached to the forming of a relationship whilst immigration status was precarious. The Judge referred at paragraph 27 to bearing in mind the fact that the Appellant appears to have remained unlawfully and without leave for a substantial number of years and appears to have attempted deception by claiming that she had indefinite leave to remain as set out at paragraph 23 of the refusal letter. In addition, the Judge continued, plainly she has worked in the United Kingdom without lawful authority.
 2. At paragraph 28 the Judge states that furthermore I have taken into account the provisions of Section 117B of the Immigration Act 2014 in my considerations in this case. The Judge then refers to the criteria as to whether English is spoken and whether integration had taken place together with the question of whether the Appellant has been a burden on the tax payer.
 3. At paragraph 29 the Judge then continues to refer to the decision in Beoku- Betts. In the light of the wording employed by the Judge at paragraphs 27, 28 and 29 the arguable error of law to which I refer has arisen.
4. At the hearing before me the Appellant was represented by the Mr Ume-Ezeoke and Mr Tufan appeared to represent the Respondent.

Submissions

5. On behalf the Respondent Mr Tufan relied on the grounds of appeal to the Upper Tribunal. He said that the Judge had made a material misdirection in finding that the Appellant's circumstances are 'compelling'. The Judge had failed to take account of the requirement in section 117B Nationality Immigration and Asylum Act 2002 to give little weight to the

family life and private life of the Appellant as it had been established at a time when her immigration status was precarious. The Judge had failed to take account of the fact the Appellant could return to Jamaica and make an entry clearance application. The Judge failed to factor into the balance the fact that the Appellant has worked illegally in the United Kingdom.

6. For the Appellant Mr Ume-Ezeoke referred to paragraph 27 of the determination and said that the Judge did indeed balance his consideration taking all relevant matters into account. The Judge had correctly considered the positions of two 'innocent' people, the Appellant's partner and the Appellant's mother. Section 117B requires little weight to be given to family life established at a time when status is unlawful or precarious, not no weight. The Judge properly balances the positive and the negative.
7. I said that in my judgment the determination contained no material error of law and I reserved by written decision which I now give with reasons.

Decision

8. The Appellant is a 48 year old national of Jamaica who came to the United Kingdom visit her British citizen mother. The date of her arrival is incorrectly stated in both the Respondent's refusal letter and the First-tier Tribunal determination as 27 March 2001. This is a simple mistake as both go on to record that she made an in country application for further leave to remain on 26 March 2001 which would of course have been the day before her arrival. The correct date of arrival appears to be September 2000. In any event the Appellant made an in time application to extend leave to remain on 26 March 2001 and this application was refused on 16 November 2001. The Appellant's evidence to the First-tier Tribunal was that she did not receive this notice of refusal having been let down by her legal representatives. It does not appear however that she made any concerted efforts to chase a response. The Appellant carried on living with her mother; she went to college and obtained various part time jobs. In 2002 she met Alvin Dixon and eventually developed a relationship with him. The Appellant moved in with Mr Dixon in 2009 and has been with him ever since. Mr Dixon is a British citizen of Jamaican origin. He has lived in the United Kingdom since 1959 and has never been back to Jamaica. He is now 82 years old and suffers from various, mostly age related, medical conditions. The Appellant was encountered working illegally as a carer on 11 June 2010. At the time of her arrest she provided a false letter purporting to show that she held indefinite leave

to remain. On 23 May 2011 the Appellant submitted an application for leave to remain as an unmarried partner. This is the application that was eventually refused on 26 November 2013.

9. When the appeal came for hearing before the First-tier Tribunal it does not appear that there were significant differences between the parties so far as the facts were concerned. The Respondent accepted that the Appellant and Mr Dixon were in a subsisting relationship akin to marriage that had subsisted for more than two years and that Mr Dixon was an elderly man settled in the United Kingdom since 1959. It was also accepted that the Appellant's mother is a British citizen living in the United Kingdom who also had various age related health conditions and received assistance in this respect from the Appellant. It was accepted on the Appellant's behalf that she could not meet the requirements of the Immigration Rules because she was in the United Kingdom in breach of immigration law.
10. The determination of the First-tier Tribunal reveals that the Judge correctly identified anomalies in the Respondent's refusal letter including the fact that the Respondent on the one hand accepted that the Appellant and Mr Dixon were in a subsisting and genuine relationship whilst on the other stating that the Appellant does not have any family life in the United Kingdom. The Judge goes on to consider by reference to Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC) whether there are arguably good grounds for allowing leave to remain outside the Immigration Rules and finds that there are arguable and compelling circumstances for doing so. The Judge explains his reasoning in paragraphs 19 to 28 of his determination, makes reference to section 117B of the 2002 Act and goes on to conclude in paragraph 29 that the Respondent's decision was a disproportionate response to the need maintain firm immigration control. As a result he allows the appeal.
11. The Respondent's grounds of appeal to the Upper Tribunal maintained by Mr Tufan on oral submissions argue that the Judge misdirected himself firstly in finding compelling circumstances to go outside the Immigration Rules and secondly in respect of section 117B in failing to ascribe 'little weight' to her relationship with Mr Dixon and not giving sufficient weight to the negative factors of working illegally and claiming on arrest that she had lawful status in the United Kingdom.
12. In my judgment neither of these grounds has merit. The Judge very carefully considers whether there are arguable grounds for

granting leave to remain outside the Immigration rules and finds that compelling circumstances exist. He directs himself properly and carefully by reference to Gulshan. The Respondent's grounds in this respect are no more than a disagreement with the Judge's conclusion. In my judgment the Judge was fully entitled to reach the conclusion that he did and indeed, given the Respondent's acceptance that the relationship between the Appellant and Mr Dixon was genuine and subsisting and given Mr Dixon's advanced age and age related medical conditions including early onset dementia, it is difficult to see that the Judge could properly have reached any other conclusion.

13. So far as section 117B of the 2002 Act (section 19 of the 2014 Act) is concerned the Respondent notes that the Appellant meets some of the positive requirements of the required public interest considerations including the ability to speak English, integration into British society and the fact that she is not a burden on taxpayers. It is the Respondent's assertion that the Judge misdirected himself by not taking proper account of the negative factors in the balance. Firstly the Respondent asserts that the Judge failed to give 'little weight' to the relationship due to it having been established at a time when the Appellant's presence in the United Kingdom was unlawful. Secondly the Respondent asserts that the Appellant's illegal residence, unlawful employment and attempted deception should have weighed against her in the balance.
14. Again there is in my judgment no material misdirection. The Judge takes account of what is an accepted and genuine relationship. He clearly and understandably finds it to be a relationship where, due to the age and medical condition of Mr Dixon it would not be reasonable to expect him to relocate to Jamaica and where Mr Dixon's interests are best served by the Appellant's presence and care. The Judge does not make the point but it is obvious that Mr Dixon would be put at great disadvantage if the Appellant alone travelled to Jamaica to make an entry clearance application to return. It is clear that he needs her presence on a day to day basis not only as a partner but also as a carer. There is in my judgment no error in the weight given to the relationship in this respect. Section 117B requires 'little weight' to be given. Clearly 'little weight' is not 'no weight'. It is impossible to say in general terms whether 'little weight' is a positive or a negative. Clearly it is less weight than that which would otherwise be given but in the context of this appeal where the relationship is accepted and is more than a simply spousal relationship but a caring relationship as well there is in my judgment no indication that the Judge gave to the relationship too much weight in the balance.

15. So far as the Appellant's illegal working and attempted deception are concerned these are not matters that are referred to in section 117B so there is no statutory duty imposed to consider them. That does not of course mean that the Judge should not consider them, section 117B does not purport to give an exhaustive list of positives and negatives. These are factors that needed to be considered. The Judge was clearly aware of these matters and specifically bears them in mind in the proportionality balance (paragraph 27). There is no misdirection revealed.
16. There is in my judgment no error of law material to the decision to allow the appeal and the Respondent's appeal is therefore dismissed.

Summary

17. The decision of the First-tier Tribunal did not involve the making of a material error of law.

Signed:
2014

Date: 26 November

J F W Phillips
Deputy Judge of the Upper Tribunal