



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

Appeal Number: IA/02143/2014

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower, Decision & Reasons  
Birmingham On 20<sup>th</sup> March 2015 Promulgated On 15<sup>th</sup> April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MANSHURA BEGUM  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr C Lane (Counsel)

For the Respondent: Mr N Smart, HOPO

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Camp, promulgated on 1<sup>st</sup> December 2014, following a hearing at Birmingham, Sheldon Court on 7<sup>th</sup> November 2014. In the determination, the judge allowed the appeal of Manshura Begum. The Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is a female citizen of Pakistan who was born on 1<sup>st</sup> January 1957. She applied for indefinite leave to remain outside the Immigration Rules on the basis that she wished to remain in the UK to provide care for her daughter (Zakia), who was said to suffer from mental health problems, and to care for Zakia's daughter (Asila). This was after the Appellant had entered the UK as a visitor on a six months' visa from 14<sup>th</sup> February 2013 to 14<sup>th</sup> August 2013.

### **The Background**

3. At the hearing before Judge Camp, there had been an application by Mr Lane, who had also represented the Appellant on that occasion, for an adjournment. The application was on the basis that the evidence cited by the Respondent was out of date. Asila was still living with her mother. Asila's father lived in Birmingham. Contact had been made with the social worker there. The current state of the proceedings before the family court was unknown. Zakia, who was the daughter of the Appellant who allegedly needed more care, was in need of 24 hour support. (See paragraph 8). The judge declined to adjourn the hearing before him (see paragraph 12).
4. The judge recounted the evidence which was that Zakia had been living with her daughter Asila in Bradford when they moved to Birmingham, after which Zakia's daughter, Asila, was taken away from her. Zakia was not supported by Social Services in Birmingham. She had been supported in Bradford. Birmingham Social Services were happy with the way in which Zakia was receiving support from the Appellant. Zakia's health had been good in Pakistan but her mental state had deteriorated in the United Kingdom because of her treatment by her husband. She had been in the United Kingdom for nine or ten years.
5. When the Appellant came to the UK in February 2013, she had intended to return back to Pakistan, "but Zakia's health had deteriorated" (paragraph 13) and the Appellant wanted to provide her with support. There was evidence before the Tribunal that Zakia's ex-husband had no contact with her except sometimes when Zakia contacted Asila by telephone.
6. The judge heard submissions in relation to the application of Section 117 of the 2002 Act (paragraph 22). He heard submissions from Mr Lane that:

"Zakia was a vulnerable adult who suffered from depression and had learning difficulties". It was her interests which were essentially the subject of the appeal. The situation was unusual and merited consideration of Article 8 outside the Immigration Rules. Zakia had had no problems initially, but had been affected by the breakdown of her marriage. It was the Appellant who had offered her the greatest support. The question was one of proportionality" (paragraph 23).
7. The judge held that the Appellant and Mr Khan, who had given evidence as the relative of the Appellant, explaining that the Appellant was his wife's mother's sister (see paragraph 18), were both credible and honest witnesses (see paragraph 24). The judge held that he would accept that, "the basis of the appeal is that the Appellant considers that she is needed to care for her daughter Zakia and not that the Appellant or Zakia believes

that the Appellant's presence will help Zakia to regain custody of her daughter Asila" (paragraph 25).

8. The judge observed that the most recent professional report on Zakia's condition was a psychological assessment dated October 2012 by Dr Samantha Hardingham, a clinical psychologist, who had said that Zakia's IQ was found to be "in the extremely low ranges" (paragraph 26). The judge applied the leading cases on Article 8 (paragraph 31).
9. The conclusions by the judge were clear that,

"The relationship between the Appellant and Zakia is one in which there are not only emotional ties but also emotional, mental and physical dependency. I accept that the evidence that Zakia would be quite unable to manage her life without assistance and that it is the Appellant who provides that assistance. Whether or not some other relative or outside agency could provide a similar kind of care is not relevant to the question of whether family life exists ....." (paragraph 38).

The judge also held that, "Zakia has been in the United Kingdom legitimately for some ten years" (paragraph 39). The issue, however, was that in relation to the Appellant, and not in relation to Zakia. In considering Article 8, the judge was driven therefore to examine the application of Section 117B of the 2002 Act (see paragraph 44). He concluded that, "the circumstances in which the Appellant finds herself could not be deliberately replicated by others seeking to evade the Immigration Rules" (paragraph 45). He was clear that, "the disruption and emotional damage caused by the Appellant's removal would be considerable" (paragraph 46).

10. The appeal was allowed.

### **Grounds of Application**

11. The grounds of application state that the judge erred in law by failing to consider the public interest requirements set out in Section 117B of the 2002 Act in respect of the Appellant's ability to speak English and in relation to her financial independence. Moreover, the judge had misdirected himself on the requirements of Section 117B(iv) by concentrating on the status of the Appellant's daughter, rather than that of the Appellant herself.
12. On 4<sup>th</sup> February 2015, permission to appeal was granted.

### **Submissions**

13. At the hearing before me on 20<sup>th</sup> March 2015, Mr Lane handed up his skeleton argument, dated 18<sup>th</sup> March 2015, and relied upon the two cases of **Dube (Section 117A - 117D) [2015] UKUT 90**, and upon **Beoku-Betts [2008] UKHL 39**, both of which he handed up. Since it was Mr Smart's appeal on behalf of the Respondent Secretary of State, he began with his submissions. He relied upon the Grounds of Appeal. He also relied upon **Dube**, which he submitted was a very useful case to explain the application of Section 117. He submitted a Section 117A expressly imposes a public interest consideration of immigration control which

cannot be ignored. Judges have to take this into account. The importance of immigration control was expressly emphasised before the judge by the Presenting Officer, as made clear at paragraph 22 of the determination, that the public interest requirement in favour of immigration control was important. Second, the judge appears to have misread the situation (see paragraph 8 of the determination which deals with the adjournment request by Mr Lane) in concluding that the child was in the care of her mother, Zakia. This was not true. Third, the Appellant's status was "precarious" as the judge noted at paragraph 44, and yet proceeded to allow the appeal.

14. For his part, Mr Lane referred to his skeleton argument. He submitted that the judge was not wrong in the way that he dealt with the adjournment application (at paragraph 8) and did not create the impression that the child was in care. This is because at paragraph 25 of the determination he made it clear that "the basis of the appeal is that the Appellant considers that she is needed to care for her daughter Zakia and not that the Appellant or Zakia believes that the Appellant's presence will help Zakia to regain custody of her daughter Asila" (paragraph 25). Therefore there was no confusion.
15. Second, as far as the public interest consideration in favour of immigration control is concerned, the judge expressly states (at paragraph 45) that the Appellant's situation is not one that would "be deliberately replicated by others seeking to evade the Immigration Rules". He further adds that, "so far from placing a burden on public funds, [the Appellant's continued presence in the UK] would actually save them by obviating the need for an intervention of Social Services to care for Zakia" (paragraph 45).
16. Third, the judge had found the parties before him to be credible witnesses. He accepted that the Appellant had come for a short-term visit on a visitor's visa, but that when she saw the condition of her daughter, Zakia, she decided that she had to stay here to look after her, and this is fully set out at paragraph 46 of the determination where the judge states that, "the Appellant had no initial intention of overstaying but felt compelled to remain".
17. Finally, as far as the public interest considerations as a whole are concerned in paragraph 117 of the 2002 Act, the judge is clear that "the deception and emotional damage caused by the Appellant's removal would be considerable" and that "the Appellant's intention has never been to bypass the Immigration Rules" (paragraph 46). He ends by saying that, "I conclude that the human rights of the Appellant and Zakia outweigh the public interest objectives specified. The removal of the Appellant would consequently amount to a breach of the United Kingdom's obligations under Article 8 of the ECHR" (paragraph 47). These conclusions and findings are open to the judge.

### **No Error of Law**

18. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007)

such that I should set aside the decision. It is clear that the judge had the Section 117B considerations in mind (see paragraph 44). The judge was aware that the Appellant's English was limited because she gave evidence in Mirpuri (paragraph 13). The judge found the Appellant and Mr Khan to be credible and honest witnesses (see paragraph 24). He also concluded that the Appellant was supported financially by Mr Khan and by others and that she sometimes refused financial help. Any leave to remain would be granted without recourse to public funds (see IDI chapter 8.1.3(iii)).

19. The judge was mindful of the wider impact on the public purse (see paragraphs 29 and 45) and the judge was cognisant of the fact that the Appellant is elderly and a full-time carer for her daughter (see paragraph 39). The test in **Dube** was applied by the judge. It is not the case that the judge has placed too much weight upon the Appellant's private life because the judge makes clear that the appeal is based upon the need of the Appellant to support her daughter, Zakia (paragraph 10).
20. This is emphasised later on as well (see paragraph 25). The judge faithfully and properly applies the House of Lords decision in **Beoku-Betts [2008] UKHL 39** at paragraph 32 of the determination. He is also aware that little weight is to be granted to the Appellant's private life which has been established at a time when her status was precarious (see paragraph 44 of the determination).
21. What is significant, however, is that the judge equally emphasises that Zakia's private life was established while she was in the UK legally and that this adds more weight. The judge has regard to the wider economic issues (at paragraph 45) and considers that allowing this appeal would not damage the public interest in immigration controls (paragraph 45). All in all, therefore, the decision was one that was open to the judge because it does not exhibit a material error of law, and is not one that was not recently open to this judge.

### **Notice of Decision**

There is no material error of law in the judge's determination. The determination shall stand.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

11<sup>th</sup> April 2015