



IAC-FH-CK-V1

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

Appeal Number: IA/37527/2014

THE IMMIGRATION ACTS

Heard at Field House

On 4 March 2016

**Decision & Reasons
Promulgated
On 13 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

[A W]

(~~ANONYMITY DIRECTION NOT MADE~~)

Appellant

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Mr O Jones, Counsel instructed by Cavendish Legal Group

DECISION AND REASONS

1. This is an appeal from a decision of First-tier Tribunal Judge Kirvan promulgated on 5 May 2015. The appeal is brought by the Secretary of State for the Home Department, with leave of First-tier Tribunal Judge Lambert granted on 8 July 2015.
2. As matters have crystallised before me today, three substantive points are raised as alleged errors of law. The first is whether or not this case fell

within the Immigration Rules and specifically reference is made to E-ECDR.2.4. and 2.5. The second is whether in the event the case falls outside the Immigration Rules, the First-tier Tribunal Judge was correct to consider exceptional circumstances and the right to family life as articulated in Article 8 of the European Convention on Human Right. The third point is if having considered this case exceptionally under the European Convention then did the judge properly apply the public interest balancing exercise under paragraph 117A to D inclusive of the Immigration Act 2014?

3. The respondent to this appeal is a Jamaican citizen born in 1939, although she has spent something in the order of half her life living in the United Kingdom. She came most recently to this country as a visitor at which stage it was noted that her health had deteriorated considerably and these were matters which formed the basis of evidence and submissions before the First-tier Tribunal Judge. There are no challenges to the factual findings of the judge and in those circumstances it is unnecessary for me to read them into this determination.
4. In relation to the provision under the Immigration Rules, it is apparent from the determination at paragraph 58 that it was accepted at that stage by both representatives that the appellant would not meet the requirements of the Immigration Rules. The context of that paragraph suggests that it is Rule 276ADE which is under discussion and the reason why its provisions were not met related to the extended period of continuous residence, which had not been met.
5. The point raised both in the grounds of appeal and in oral argument was whether paragraphs E-ECDR.2.4. and 2.5 were met. There is an academic submission that E-ECDR.2.5 might have been met, for the purposes of this appeal I need not make a decision one way or the other because, following concession rehearsed above, the judge looked at this matter outside the Immigration Rules and made a determination based on exceptional circumstances. She states at paragraph 67: "It seems to me that this is a case which is not adequately covered by the Immigration Rules and there are exceptional and compelling circumstances which would lead me to consider this matter under Article 8."
6. The judge goes on to summarise the factual matters in this case which she regards as being both exceptional and compelling. They relate among other things to the appellant's age and her period of residence in the United Kingdom. They include the fact that she has both an occupational and a state pension payable in respect of her time in the United Kingdom and that were she to return to Jamaica her home is incapable of occupation since it has been broken into and the furniture removed and she lacks both the support structure and the mental capacity to make arrangements for independent living. The judge was also satisfied that there was no reasonable likelihood of the respondent being able to find a

place in a care home that was sufficient for her particular needs. She suffers among other things from vascular dementia.

7. There is, as I have said already, no challenge to those factual findings but the argument is put before me on behalf of the Secretary of State that either individually or cumulatively, those matters do not amount to an exceptional or compelling circumstance. I am unable to accept that submission. The matter was entirely within the province of the First-tier Tribunal Judge to decide. She heard the evidence. She carried out an assessment of the credibility of the four live witnesses before her and the documentation that was produced. It seems to me that as a matter of law the things she relied on as amounting to exceptional and compelling circumstance were legitimate and that her finding cannot be interfered with.
8. The next alleged error of law is that the judge failed properly to take into account the public interest factors when considering the balancing exercise under ss 117A to 117D. In my assessment, these factors were addressed adequately by the judge in the following passages:
 - i. At paragraph 69 the judge says: “It seems to me therefore that if the appellant is returned to Jamaica there would be an interference with family life. I have gone on to consider whether the interference is necessary and proportionate.”
 - ii. At paragraph 71 the judge says: “I have weighed in that the authorities in the United Kingdom are entitled to enforce the system of immigration control and that enforcement of that control is clearly in the public interest. I have taken into account paragraphs 117A - D of the 2014 Act as applicable”,
 - iii. At paragraph 73: “However, I have to weigh up the right to family life of this appellant against the interests of the authorities. Bearing in mind the facts of this case as a whole I have reached the conclusion that in this instance the balance is tipped in favour of the appellant.”
10. This is a decision of an experienced First-tier Tribunal Judge, evidently more than familiar with the statutory material within Section 117 to which reference is made. I do not consider it in any way derogates from the decision that the text of those paragraphs is not set out in the course of the determination. It is quite clear both from the passages I have cited and from the judgment as a whole that these matters were at the forefront of the Judge’s mind at the time and that he properly carried out the balancing exercise mindful both of the exceptional circumstances he had recognised and the public interest articulated in the statute.
11. In all of those circumstances this appeal must be dismissed.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed *Mark Hill*

Date

24 March 2016

Deputy Upper Tribunal Judge Hill QC