**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number**: **HU/12412/2016**

**THE IMMIGRATION ACTS**

| **Heard at Manchester Piccadilly** | **Decision & Reasons Promulgated** |
|---|---|
| **On 7 February 2018** | **On 19 February 2018** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**SARA YASALAM A BAFAYAD**
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Lawson of Cohesion Legal Services
For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant was born on 4 July 1984 and is a national of Saudi Arabia.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Thorne promulgated on 7 March 2017 which dismissed the Appellant's appeal against the decision of the Respondent dated 6 May 2016 to refuse the Appellants application for leave to remain on the basis of her relationship with her sister and nephew..
5. Grounds of appeal were lodged arguing: that the Judge was in error in his assessment of whether the provisions of paragraph 117B 6 of the Nationality Immigration and Asylum Act 2002 applied in relation to the Appellant and her nephew; the Judge made a factual error in assessing the case on the basis that the sisters parents lived with them when they had only been in the UK for a holiday; his assessment of the best interests of the child were contrary to the views of the professionals.
6. On 14 September 2017 First-tier Tribunal Judge Woodcraft refused permission to appeal. The application was renewed and on 17 October 2017 Upper Tribunal Judge Gill granted permission to appeal.
7. At the hearing I heard submissions from Mr Lawson on behalf of the Appellant that :
8. The Judges consideration of the relationship between the Appellant and her nephew was flawed.
9. The evidence of all of the professionals was that the person with responsibility was the Appellant and that the mother was incapable of looking after her child.
10. The Appellants sister had been struggling prior to receiving assistance from her sister.
11. The nephew needs round the clock care and the sister is prepared to do it. The child will go into care as the mother cannot cope. It was better for the child for a family member to assist.

    The Appellant came to the UK to study but did not realise the seriousness of her sisters plight and she had sacrificed herself for her sister and nephew.

12. On behalf of the Respondent Mr Mc Vitie submitted that the Judge who granted permission appeared not to have read the decision as the Judge made clear findings about the relationship between the child and the Appellant

13. He found that the Appellant was trying to remain as a carer to someone who had not previously needed her help.

14. The Appellant did not meet the requirements of the Rules or of paragraph 117B 6.

15. The state has assisted in the care of the nephew and the contribution of the sister did not amount to a parental relationship.

**Finding on Material Error**

16. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

17. It is a trite observation that a judge need not address in detail every single argument advanced before him, nor consider in isolation every single piece of evidence. He must weigh all of the evidence before him, and give clear reasons for his conclusions such that the parties, and in particular the losing party, can understand the reasons for her decision.

18. The Appellants argument in this case was that the Appellant was the de facto mother of her nephew and therefore met the requirements of paragraph 117B6 . Mr Lawson argued before me the childs mother was incapable of caring for him and there was a risk if the Appellant were removed that he would go into care which would be contrary to his best interests. He argued that this was the view of all of the professionals whose evidence formed part of the bundle before the Judge.

19. The Judge identified all of the medical and psychological evidence before him (paragraphs 12, 13, 14) and came to the conclusion based on that evidence that the Appellant '*spends time looking after her nephew but that did not mean that she was his mother'*. There was nothing in the reports of the medical professionals that would support Mr Lawsons claim that the Appellant was the person responsible for the Appellant and that his mother was incapable of looking

after her child. There is no doubt that the Appellant assisted with '*the day to day management or personal administration work*' as Dr Farooq stated in his report of 24.11.2015 but that is very different from being in a parental relationship with her nephew as the Judge noted at paragraph 24 of the decision. It would have been open to the Judge to note that those who dealt directly with the Appellants nephew in relation to his medical needs (F27-42) manifestly did not regard the Appellant as his de facto mother. On any fair reading of the detailed reports they regarded her as his aunt, an interpreter, and someone who helpfully accompanied his sister and nephew to the appointments. All of the discussion of his needs and future care plans was directed at his mother who had brought her concerns about him to the authorities attention and on an occasion when she was unable to attend due to ill health it was clear from the report (F37) that the Disability Nurse 'hoped to see A's Mother at he next appointment'. No where does any of the professionals suggest that the Appellants sister was incapable of looking after her child. In relation to the psychologists report it would have been open to the Judge to note that this was largely focused on an assessment of the Appellants sisters needs, the only person the psychologist met as she did not meet Abdul. The Psychologist does not suggest that the Appellants sister regarded her sister as the child's mother or unable to care for her son. Mr Lawsons claim that the child would go into care of the Appellant is removed is unsupported by any of the evidence, from either the professionals or his mother.

20. The Judge noted in his assessment of the child's best interests (paragraphs 26-30) that the Appellants nephew is a British citizen and is currently supported by social services and the NHS and while it may well be that the Appellants sister would prefer the assistance to come from her sister that is not the test that the Judge was required to apply.

21. Therefore in assessing whether the Appellant met the requirements of section 117B 6 which the Judge set out at paragraph 54 the whole of the Judges findings about the nature of the Appellants relationship with the child must be taken into account which make clear that he did not accept there was a parental relationship. Thus paragraph 24, 57 (vi), (vii) (xii) (xiv) read together are adequate reasons as to why the Judge did not accept that there was a parental relationship and while not diminishing the help, assistance and emotional support she

provided to her sister in the case of her son this was not the same as a parental relationship.

22. It was also argued that the Judge was in error in finding at paragraph 13 that the Appellants parents and uncles lived with her sister. This was not a finding by the Judge but a summary of the report of Dr Farooq. In assessing the best interests of the child at paragraphs 28-30 while taking into account the assistance of family members the Judge in fact found that 'such care is in fact provided at public expense by various agencies of the local authority, social services and the NHS.' Therefore any factual error relating to the presence of family members in the UK who had since returned to Saudi Arabia made no material difference as the Judge found that the care they potentially offered was provided by other agencies.

23. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1) : "*Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."*

**CONCLUSION**

24. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

**DECISION**

25. **The appeal is dismissed.**

Signed Date 11.2.2018

Deputy Upper Tribunal Judge Birrell