



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

Appeal no: **AA/03864/2015**

THE IMMIGRATION ACTS

Heard at **Field House**
On: **27th November 2015**

Decision and Reasons Promulgated
On: **4th December 2015**

Before:

Upper Tribunal Judge **John FREEMAN**

Between:

Robet SUBH (*alias Manjeet Singh*)

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Amarjit Seehra* (counsel instructed by Elthorne)

For the respondent: Mr David Clarke

DETERMINATION AND REASONS

This is an appeal, by the respondent to the original appeal against the decision of the First-tier Tribunal (Judge Anthony Metzger), sitting at Taylor House on 27 July, to allow a human rights appeal by a citizen of India, born 3 September 1979. The appellant arrived in this country and claimed asylum on 30 September 2001, and was given temporary admission overnight. However, he failed to report back the next day (he says on the advice of an 'agent'), and his claim was refused on non-compliance grounds on 1 November. Unsurprisingly, there was no appeal against that decision; and the Home Office heard no more of him till at least 2010. On

NOTE: no anonymity direction made at first instance will continue, unless extended by me.

20 February 2015 he was refused leave to remain on human rights grounds.

2. The statute law the judge needed to apply is set out in the [Nationality, Immigration and Asylum Act 2002](#), as amended in the Immigration Act 2014, s. 117B: in particular
 - (1) The maintenance of effective immigration controls is in the public interest.
 - (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
 - (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
 - (4) Little weight should be given to—
 - (a) a private life, or
 - (b) a relationship formed with a qualifying partner,
that is established by a person at a time when the person is in the United Kingdom unlawfully.
 - (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious
 - (6) ...
3. Although the judge referred in passing (at paragraph 18) to “Paragraph [*sic*] 117A and 177B”, and the need for proportionality under article 8 of the European Convention on Human Rights, he made no further reference at all to the actual requirements of the law, and in particular to s. 117B (4), which on any view applied to this case, and that was why the Home Office were given permission to appeal. The presenting officer who appeared before him does not seem to have helped, by apparently agreeing with Miss Seehra that the only issue was delay: those outside this field might be surprised to hear that this referred to the Home Office’s delay in dealing with this appellant’s claim, rather than his own in making it.
4. Quite apart from the Home Office’s failure to find this appellant or take any enforcement action against him, following their refusal of asylum in

his absence on 1 November 2001, till he got in touch with them, hoping to benefit from the 'legacy policy', they did nothing at all about that, despite reminders from his solicitors, till 17 November 2014, when they sent their first refusal letter. After a threat of judicial review action, they made their final decision on 23 February 2015.

5. This was a dereliction of the Home Office's duty to the public, as well as to the appellant, and the judge was entitled to take it into account in assessing the case. However, his first duty was to apply the law made by Parliament. Though he alluded to it at various points in his decision, as I have noted and Miss Seehra stressed, I cannot see any reference to it in his decision paragraphs 18 or 19. The judge appears to have treated the appellant's long residence in this country, and the Home Office's delay in dealing with his 2010 application, as if they were decisive factors. However, the terms of s. 117B (4) make it quite clear that they could be no such thing, and the judge was clearly wrong in law on the basis for his decision.

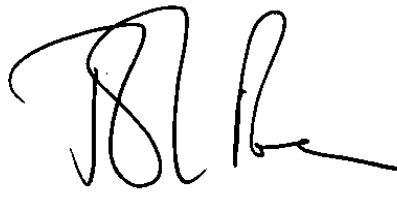
6. It follows that the decision will have to be re-made. Both sides agreed that there would need to be further consideration on the facts of whether or not the appellant could meet any of the requirements of paragraph 276ADE of the Rules: Miss Seehra very properly took the responsibility for not referring the judge to these in the first place, and it is clear from the line of decisions following *MF (Nigeria)* [2013] EWCA Civ 1192 that the order of consideration should be as follows:

(a) Can the appellant satisfy all the relevant requirements of the Rules? If he is otherwise qualified, then paragraph 276ADE (1) (vi), as to whether "... there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK" may be particularly relevant.

If not, then would it be disproportionate to the legitimate purpose of immigration control not to allow him to remain in this country? In this context, the judge will need to bear in mind s. 117B, in particular sub-sections (1) and (4). While it is not irrelevant that the appellant had got in touch with the Home Office in 2010, the judge will no doubt note that, even where someone has 'precarious' leave, and this appellant had no leave at all, then little weight is to be given to private life established at such a time.

Home Office appeal allowed: decision set aside

Fresh hearing before First-tier Tribunal, not Judge Metzger

A handwritten signature in black ink, consisting of stylized, cursive letters that appear to be 'JBL' followed by a horizontal line.

(a judge of the Upper Tribunal)