



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/06838/2015
OA/06846/2015
OA/06847/2015

THE IMMIGRATION ACTS

Heard at: Bradford
On 19 October 2017

Decision Promulgated
On 24 October 2017

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ZT
AY
RT

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the appellant: Mrs Peterson, Senior Home Office Presenting Officer
For the respondent: Mr Hans, Henry Hyams & Co

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant.

1. I have made an anonymity order because this decision refers to the circumstances of minor children. ZT and RT (born in 1998) are the twin younger sisters of the sponsor. AY (born in 2004) is the sponsor's niece. It is

accepted the three respondents lived together with the sponsor and her two children, prior to the sponsor leaving Eritrea to claim asylum in the UK in 2012. They now reside in Addis Ababa, Ethiopia.

2. The sponsor is an Eritrean citizen, who has been granted refugee status in the UK.
3. The SSHD has appealed against a decision of First-tier Tribunal Judge Bradshaw dated 26 January 2017 in which it allowed the respondent's appeals on human rights grounds.

Background history

4. The respondent's appeals were first considered by Judge Bradshaw in an earlier decision dated 13 September 2016. In that decision, the appeals of all five of the sponsor's dependents were allowed i.e. these three respondents and the sponsor's own two children. An appeal against that decision was heard by the Upper Tribunal on 7 November 2016. The SSHD appears to have accepted there was no error of law in the decision relating to the sponsor's own children at [4] and the appeals relating to them were dismissed. The Upper Tribunal indicated the hope that the SSHD would promptly issue entry clearance for them at [10]. I am told that these two children entered the UK in March 2017 with entry clearance, and have recently applied for indefinite leave to remain.
5. The Upper Tribunal found that Judge Bradshaw made a material error of law when making her decision regarding these respondents, in particular there was a failure to take into account relevant matters, such as the respondents' ability to speak English and the likely financial implications of their permitted entry to the UK upon the tax payer. The Upper Tribunal remitted the respondents' appeals to Judge Bradshaw.
6. When the matter came before Judge Bradshaw on the second occasion on 3 January 2017 there were therefore only three appellants (the respondents in these proceedings), whose appeals were allowed.
7. In a decision dated 1 August 2017 the First-tier Tribunal granted the SSHD permission to appeal on this basis:

“it is an arguable error of law to fail to deal [with] section 117B, which is statute law, particularly when the failure to meet the Immigration Rules is on the basis of maintenance and accommodation, the bills for both of which will, in effect be picked up by public funds, if entry clearance is granted.”

8. The matter now comes before me to determine whether the First-tier Tribunal made an error of law.

Hearing

9. At the hearing Mrs Peterson made brief submissions and focused solely on the financial burden issue. She invited me to find that the First-tier Tribunal failed to consider the financial burden that would be caused by the respondents' admission. I pointed out that the First-tier Tribunal had taken this into account at [27]. Mrs Peterson accepted this but submitted that insufficient weight was given to the respondents' access to public funding.
10. Mr Hans relied upon a rule 24 notice and invited me to find there was no material error of law.
11. After hearing from both representatives, I reserved my decision which I now provide with reasons.

Error of law discussion

12. When the decision is read as a whole, I am satisfied that Judge Bradshaw applied section 117B of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') and gave adequate reasons for her decision.
13. At [12] Judge Bradshaw made it explicit that she had taken into account section 117B and correctly summarised its effect. She was well-aware that this is one of those cases as identified in SS Congo v SSHD [2015] EWCA Civ 387 in which the grant of entry clearance would give rise to "*pressure on public resources*" – see [27]. Judge Bradshaw expressly accepted that there would be pressure upon public resources in this case. This must be viewed in context. Judge Bradshaw was provided with clear evidence on the financial implications for the state. At all material times, the sponsor worked full time as a care assistant, but it was accepted that the additional entry of the three respondents would lead to a shortfall of £84.75 per week – see [16]. Only one respondent remained of school age, as the twins are now 18.
14. I accept that it is regrettable that [31] ends with an incomplete sentence. When the decision is read as a whole I am satisfied that it is sufficiently clear that the Judge Bradshaw concluded that the particular circumstances of the case "*greatly outweigh*" the public interest considerations identified in section 117B of the 2002 Act, as referred to at [12, 25, and 27].
15. Judge Bradshaw was entitled to find that there are serious and compelling circumstances: the sponsor and her family members (these three respondents and her two children) have been through extremely challenging times over a long period of time. They lived together as a family unit prior to and after the sponsor fled Eritrea. The First-tier Tribunal was entitled to attach great weight to these circumstances provided that these were balanced with the public interest considerations. I am satisfied that an adequate balancing exercise was

undertaken and the grounds of appeal amount to a mere disagreement with the decision.

16. As Irwin LJ said in *AS (Iran) v SSHD* [2017] EWCA Civ 1539 at [26]:

“The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision are recorded.”

17. The reasons provided by the First-tier Tribunal are not elaborate but the critical balancing exercise has been undertaken and the relevant public interest considerations taken into account.

Decision

18. The decision of the First-tier Tribunal does not contain a material error of law and is not set aside.

Signed: Ms Melanie Plimmer
Judge of the Upper Tribunal

Dated: 19 October 2017