IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001301
First-tier Tribunal No. HU/57177/2021
IA/16473/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

17th January 2025

Before

UPPER TRIBUNAL JUDGE LANE

Between

Secretary of State for the Home Department

Appellant

and

FATIMA HAWAMDEH
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Arif, Senior Presenting Officer
For the Respondent: Mr Loughran.

Heard at Edinburgh 5 November 2024

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent; and to the respondent as the 'appellant' as they respectively appeared before the First-tier Tribunal.

2. The appellant is a female citizen of Syria born on 10 January 1963. She applied to the for entry clearance to the United Kingdom on basis of her family life with Ahmed Abo Zeed, her son (the sponsor). Her application was refused, and she appealed the First-tier Tribunal, which allowed her appeal. The Secretary of State now appeals to the Upper Tribunal.

3. Granting permission, First-tier Tribunal Judge Fisher wrote:

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2. The grounds assert that the Judge erred in failing to correctly undertake the proportionality balancing exercise under Article 8 of the ECHR outside the Immigration Rules. In particular, it is said that she failed to attach appropriate weight to the public interest considerations.
3. Whilst the weight to be attached to the competing interests is generally a matter for the Judge, in paragraph 32 of her decision, she highlighted the lack of information about the Sponsor's income and outgoings, and how he intended to support his mother if she were granted entry to the UK. She went on to observe that there was no accommodation for the Appellant in the Sponsor's one bedroomed flat.

4. The Judge found that the adult dependent relative provisions of Appendix FM were not met. However, there is no reference to Section 117B(1) of the 2002 Act in the decision, and arguably no consideration of the Appellant's inability to meet the Rules. Furthermore, in paragraph 40 of her decision, the Judge mentioned proficiency in the English language and dependency on the State but referred to both as neutral factors. Arguably, they are neutral only if there is compliance with Sections 117B(2) and (3). There is no reference to them as negative factors.

5. It is arguable that the Judge has failed to give any adequate consideration to the factors weighing in favour of effective immigration controls. In those circumstances, I grant permission to appeal.

4. Having heard the oral submissions of Mr Loughran, for the appellant, and Ms Arif, for the Secretary of State, I reserved my decision.

5. I consider that the judge's analysis is flawed in law for the reasons advanced by the Secretary of State. I have reached that conclusion for the following reasons.

6. First, the judge has failed properly to apply Section 117 of the 2002 Act to the facts as she found them. Under the title '*Article 8: public interest considerations* ***applicable in all cases'***, [my emphasis] section 117B of the Act provides:

(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.

At [40], the judge wrote:

> Considering first the arguments which support interference, maintenance of effective immigration control is in the public interest. As to proficiency in the English language and dependency on the State, I consider these neutral factors. The Sponsor is in employment but there are few other details about his financial circumstances before me.

This paragraph is problematic. It appears in the decision after the judge has found [29] that the appellant 'has not met the requirements of the Immigration Rules for entry clearance as an adult dependent relative as set out in Appendix FM Section EC-DR' and after the judge has observed that, to succeed outside the Immigration Rules under Article 8 ECHR, the appellant would have to show the existence of factors which are compelling and exceptional [34]. It is unclear, therefore, why, given that she was obliged by statute to consider English language proficiency and financial independence from the state, she has designated these as 'neutral factors'. Mr Loughran submitted that, although the decision does not address section 117 in terms, the judge's reference to these two factors which appear in the statute showed that the judge had fully and accurately applied section 117. However, that is to read too much into the decision, and, in any event, the submission fails to explain why, particularly given that the appellant could not meet the rules, the factors carried neither positive nor negative weight in the Article 8 ECHR balancing exercise. I accept that weight is matter for the judge, but this is not a matter of attaching weight to particular items of evidence but of showing that factors, which the law requires should be considered in every Article 8 ECHR case, had been applied. The parties are entitled to know why they respectively won or lost, and I find that the judge's reasoning lacks sufficient clarity.

7. Secondly, I agree with Ms Arif that the judge's error is compounded by the judge's observation in the same paragraph that 'the Sponsor is in employment but there are few other details about his financial circumstances before me.' The judge was entitled to find the evidence of the Sponsor truthful, but it is puzzling that she should observe that there was little evidence of the sponsor's financial circumstances and (as the grounds point out) the suitability of the sponsor accommodating the appellant in his one bedroom flat and yet appear to discount these as 'neutral factors'. I do not say that the judge could not in any circumstances have reached these findings (at [20] the judge said that she was prepared 'to believe the Sponsor' on the matter of his claimed income notwithstanding the absence of documentary evidence) but only that the parties should be clear as why she did so. In my opinion, this decision leaves them in considerable doubt.

8. I find that the judge's errors vitiate her decision, which I set aside accordingly. There will need to be a fresh fact-finding exercise which is better conducted in the First-tier Tribunal to which the appeal is returned for that Tribunal to remake the decision.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. the appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 30 December 2024