



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/06856/2015
HU/06857/2015

THE IMMIGRATION ACTS

Heard at Field House
On 11th October 2017

Decision & Reasons Promulgated
On 18th October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR UTTAM RAI
MISS YAMUNA RAI
(ANONYMITY ORDER NOT MADE)

Respondents

Representation:

For the Appellant: Ms Z Ahmad, Senior Home Office Presenting Officer
For the Respondents: Ms A Jaja, Counsel, instructed by Howe & Co Solicitors

DECISION AND REASONS

1. For ease of reference I will refer to the parties as they appeared before the First-tier Tribunal, namely that the Appellants are Mr Uttam Rai and Miss Yamuna Rai and the Respondent is the Secretary of State. An application was made by the Appellants to join the Sponsor, their father, a former Gurkha serviceman, and the application was refused. The subsequent appeal to First-tier Tribunal Judge Veloso was successful in that they succeeded under Article 8 ECHR.

2. The Secretary of State mounted several Grounds of Appeal all set out therein and permission to appeal was granted because it was said that the second Ground of Appeal was clearly arguable. While it may be said that the judge who granted permission did not make it wholly clear whether he was granting permission on the second Ground of Appeal only it was accepted by both parties before me that that was what was intended by the judge.
3. The second Ground of Appeal was said to be arguable because although the judge was considering Section 117B he stated that “the policy does not impose any employment requirement”. However, one of the considerations under Section 117B is whether or not the Appellants are financially independent. As such the grounds say that the judge had not taken account of that consideration at all and the case of **Dube (ss.117A-117D) [2015] UKUT 90 (IAC)** made it clear that the Tribunal has to have regard to all the relevant considerations and that they were not an “à la carte menu” that is at the discretion of the judge to apply or not apply.
4. Before me Ms Ahmad for the Secretary of State said that the judge had not appreciated what was said in **Dube**. The judge had therefore not looked at the relevant financial considerations. The judge had failed to take **Dube** into account. There was therefore an error in the judge’s approach and it was a matter for the Tribunal to remake the decision given the facts that had been established before the judge.
5. Furthermore it was said that although there might have been support from the witnesses the Appellants were not financially independent, which was a crucial factor in the assessment of the decision.
6. For the Appellants Ms Jaja also relied on what was said in **Dube**. In particular, at head note (2) it was said that it was not an error of law to fail to refer to Section 117A to 117D considerations if the judge had applied the appropriate test. What mattered was substance, not form. In this case the judge had the benefit of a number of witness statements, all set out in the Appellants’ bundle. In particular, there were the statements of the Sponsor’s wife and a brother. The statements made it very clear that the witnesses would support the Appellants financially. With reference to page 11 of the subjective bundle under paragraph 14 of the statement from Dik Rai it was said that: “*We confirm that we can maintain and accommodate our children in the UK. My son Shiva Kumar is more than happy to support them. He is currently serving in British Army. My children will not be a burden on public funds.*” There was a similar statement at page 13 at paragraph 12 in the statement from Shiva Rai in that he was happy to support his father to sponsor and accommodate his siblings at any time. He confirmed they would not be a burden on public funds. The judge had accepted this evidence as true and therefore the judge had properly considered what was set out in **Dube** and with reference to head note (e) of that case Sections 117A to 117D do not represent any kind of radical departure from or “override” of previous case law on Article 8.
7. As such it was said that there was no error by the judge and the decision should stand.

8. I reserved my decision.

Conclusions

9. Section 117B (3) of the 2002 act provides that it is in the public interest that persons who seek to enter are financially independent because such persons are not a burden on taxpayers and are better able to integrate into society.
10. It seems to me that the judge's decision is faultless except for the finding in paragraph 40 when she referred to Section 117B and noted that the policy did not impose any employment requirement. The judge said no more than that and accordingly it seems to me clearly arguable that this part of the judge's decision is incomplete and that is a possible error of law. However, as Ms Jaja pointed out, the judge did accept the evidence of the witnesses whose evidence was clear that the Appellants would not be a burden on taxpayers. There is no challenge to the fact that she was entitled to do so. What she could have said was that having accepted the evidence of the witnesses not only did the policy not impose any employment requirement but she did not consider that the Appellants would become a burden on taxpayers. That is the clear and only implication of her findings that the witnesses' evidence should be accepted. Given that, it can be said that the judge did comply with **Dube**. It follows from that finding that there is no error of law, let alone a material error.
11. It follows that although the judge could (and should) have set out the matter slightly more clearly in paragraph 40 there is no error of law and the decision shall stand.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

No anonymity order is made.

Signed *JG Macdonald*

Date 17th October 2017

Deputy Upper Tribunal Judge J G Macdonald