Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13217/2018

THE IMMIGRATION ACTS

Heard at UT (IAC) Hearing in Field House	**Decision & Reasons Promulgated**
On 4th March 2019	**On 14th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

MARGARETT PAULINE WILLIAMS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Bond, Counsel
For the Respondent: Ms J Isherwood, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Coutts dismissing her appeal against the refusal of an application for further leave to remain on the basis of her human rights. The Appellant appealed against Judge Coutts' decision of 24th October 2018 and permission to appeal was granted by Upper Tribunal Judge McWilliam in the following terms:

> "Whilst Ground 2 fails to have regard to *AM (s 117B) Malawi* [2015] UKUT 0260, I grant permission on the issue raised in respect of *Rhuppia* [2018] UKSC 58.

> The case was decided after the hearing before the FTT, so the judge cannot be criticised for not considering the s.117A(2) point; however, ultimately the issue is whether the judge erred in respect of proportionality and it is arguable that he did. Permission is granted on all grounds."

2. I was not provided with a Rule 24 response from the Respondent but was given the indication that the appeal was resisted.

Error of Law

3. At the close of the hearing I reserved my decision which I shall now give. I do find that there is a material error of law in the decision such that it should be set aside. My reasons for so finding are as follows.

4. In respect of the Grounds of Appeal as framed by Ms Bond, I indicated at the outset of the hearing (and there was no argument to the contrary from the Secretary of State) that Ground 1 was correctly framed in that it did reveal that the First-tier Tribunal was under the misapprehension of fact that the Respondent's decision refusing the application for further leave to remain on the basis of the Appellant's human rights was premised upon the Appellant's son now being an adult; whereas, the refusal was in fact based upon the fact that the Appellant's son had apparently formed an independent life for himself and was living separately from the Appellant (it was emphasised, and so I note, that the previous grant of leave to the Appellant and to her son, who was then a minor and who is not party to these proceedings he having been granted a further period of leave, was given to him when he was already an adult having turned 18 years of age but, albeit still living with his mother, the Appellant at that time). I indicated to Ms Bond that whilst Ground 1 highlighted an error of law, on its own however that error would not result in a material error of law such that the decision should be set aside unless it was demonstrated that the misapprehension of fact would have had a material impact upon the outcome of the appeal.

5. Turning to Ground 2, and the basis upon which Judge McWilliam granted permission to appeal, I note, as did Judge McWilliam, that the Supreme Court's decision in *Rhuppiah v Secretary of State for the Home Department* [2018] UKSC 58 was promulgated after the decision of Judge Coutts in the First-tier Tribunal, and consequently Judge Coutts would not have considered the limited degree of flexibility within Section 117A(2)(a) of the Nationality, Immigration and Asylum Act 2002 which enables the statutory provision in Section 117B(5) (regarding the precariousness of a person's private life in the UK), to be overridden by, what had been described by Lord Justice Sales in the Court of Appeal and approved by Lord Wilson in the Supreme Court, as "particularly strong features" of a person's private life. As such I take note of [49] and [50] of *Rhuppiah v Secretary of State for the Home Department* [2018] UKSC 58, wherein the Supreme Court noted that "particularly strong features" may result in weight being given to a private life in question notwithstanding Section 117B(5), and which owing to the recent promulgation of the binding decision in *Rhuppiah*, would not have been taken into account by the First-

tier Tribunal. Such "particularly strong features" of private life in this instance may have been, for example, the Appellant's residence in the United Kingdom (albeit unlawfully) since November 2000 till date (a period of almost 18 years residence), as well as other features. Thus I do find that there is an error of law in respect of Ground 2.

6. Turning to Ground 3, and the assertion that the proportionality exercise has not been accurately conducted in that the First-tier Tribunal has failed to give sufficient weight to the Appellant's care work and has erred in respect of whether the Appellant can re-enter the UK (see §§62 to 67 of the First-tier Tribunal's decision), may have resulted in material errors of law, I do find that this ground is somewhat more tenuous than the previous two in that the First-tier Tribunal has noted the Appellant's care work, albeit that the First-tier Tribunal does not appear to have considered whether this care work would result in weight being reduced in respect of the public interest in the Appellant's removal (that may be gauged by the extent of her failure to meet the Immigration Rules in question) such matters will only be of limited utility in light of the decision from the President of the Upper Tribunal in *Thakrar (Cart JR) Article 8: Value to Community)* [2018] UKUT 336 (IAC) which commented most recently upon the judgment of the Court of Appeal in *UE (Nigeria) and Others v Secretary of State for the Home Department* [2010] EWCA Civ 975 and the concept of a person's service to the community impacting upon the proportionality assessment that may take place as a consequence. I also note the submission that the First-tier Tribunal's finding that the Appellant would be on a level playing field in terms of re-entry to the United Kingdom may also suffer from error in that I am told by Ms Bond, that care work does not fall under the Tier 2 Shortage Occupation Scheme and albeit that the UK suffers from a shortage of care workers, this category of work does not fall into the shortage occupation codes within the Immigration Rules. In any event, there may be an error here in this respect notwithstanding that Grounds 1 and 2 demonstrate that the decision should be set aside.

7. Before I conclude, I record my thanks to Ms. Isherwood whom performed her submissions admirably under difficult circumstances during a heated and emotional hearing. Although Ms. Bond apologised on behalf of the Appellant's son for his outburst, and I decided to let the matter lie, I must make clear that such events are never to be repeated, as there is no good reason for any person hindering a party from making submissions as they are employed or instructed to do, as the case may be.

8. In light of the above findings, I set aside the decision of the First-tier Tribunal in its entirety.

Notice of Decision

9. The appeal to the Upper Tribunal is allowed.

10. The decision of the First-tier Tribunal is set aside in its entirety. This matter is to be remitted to be heard by a differently constituted bench.

Directions

11. The appeal is to be remitted to IAC Hatton Cross.

12. No interpreter is required.

13. I anticipate that the Appellant and her son may wish to give evidence.

14. The time estimate for this appeal is two hours.

15. No special directions have been sought and I do not see any reason to issue any.

16. No anonymity direction has been requested and none is necessary in my view.

Signed Date: 14 March 2019

Deputy Upper Tribunal Judge Saini