Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04219/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Sent**
On 1st November 2013	**On 11th November 2013**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MK

Respondent

Representation:

For the Appellant: Mr S Spence, Home Office Presenting Officer
For the Respondent: Ms S Khan, Counsel instructed by Parker Rhodes Hickmotts

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Kelly made following a hearing at Bradford on 31st July 2013.

Background

2. The claimant is a national of Pakistan born on 20th May 1956. He appealed against the decision of the Respondent made on 23rd April 2010 to remove him from the UK on Article 8 grounds. He had arrived in the UK on 13th March 2004 and was granted leave to enter as a visitor for a period of six months and overstayed. He was arrested on 30th March 2010 when he was living at his son's address in Rotherham.

3. His son is married and has four children two of whom suffer from cerebral palsy. The claimant's daughter-in-law is anaemic and suffers from migraine and a vitamin D deficiency and has a pronounced speech impediment. His son is a taxi driver and the sole breadwinner of the family.

4. It is the claimant's case that he moved to live with his son shortly before September 2004 and has provided indispensible assistance in the daily care of his grandchildren ever since.

5. The Respondent did not believe that the family had been together all that time and believed that he had only been living with him since shortly before the arrest.

The judge's determination

6. The judge accepted the evidence that the claimant had been living with his son for the entire period. There was some evidence to the contrary. In June 2010, in a letter from a community occupational therapist, the author wrote:

> "F's grandfather has come to live with his son's family and since moving in has provided the parents invaluable support with the childcare…"

Another occupational therapist did not record him as one of those living in the family home when she wrote her letter of 16th March 2010 following a home visit.

7. The judge said that the claimant's presence was unlawful from the end of 2004 onwards and had only come to the attention of the authorities in March 2010. It was obvious to him that the son and daughter-in-law would be wary of revealing his presence to health officials. The fact that he first started to be mentioned in medical correspondence shortly after the arrest was not coincidental but resulted from the fact that his presence had already been discovered and there was no longer any point in the family hiding the fact that he was living with them.

8. He said that it was inconceivable that the claimant would have lived elsewhere whilst his son and daughter-in-law struggled to meet the needs of four small children, two of whom were suffering from cerebral palsy. Moreover it is difficult to imagine where else he could have stayed.

9. He was impressed by the detail that the claimant had provided in his witness statement concerning the daily practical care that he provided and accepted that the children had developed a deep emotional bond with their grandfather. The claim was supported by an independent social worker who observed the children's

reactions when in his company. He said it was plainly in the children's best interests that the claimant should remain in the UK so as to be able to provide them with both the practical assistance and the emotional support that he had provided continuously over the last nine years.

10. The judge said that it may well be that the cost of the care and assistance that the claimant had provided for free would have to be met by the state following his removal or the children's father would have to give up his employment in order to assist in looking after the children. On the other hand the claimant himself would become a burden on the State if he were to remain and his removal would serve to deter others from acting as he has done and overall. There would therefore be a significant public benefit attached to his removal.

11. Set against that were the best interests of the children which were overwhelmingly served by the claimant remaining here. On that basis he allowed the appeal.

The Grounds of Application

12. The Secretary of State sought permission to appeal on the grounds that the judge failed to make adequate findings in relation to the credibility issues raised by the Presenting Officer before assessing the best interests of the children. The medical evidence submitted with the initial application for asylum, dated between March 2007 and March 2010, makes no reference to him as part of the family unit despite numerous home visits and the description of the family home. The judge's findings were perverse. He had failed to give proper consideration to the claimant's credibility and failed to balance this adequately when assessing proportionality.

13. Furthermore he had failed to consider the assistance which the family received from other family members. The best interests of the children are served by being with their parents and their mother is the main carer. It is only where there are exceptional circumstances, which would mean that removal would result in unjustifiably harsh consequences, that the new Rules will not achieve an Article 8 compliant result.

14. Permission to appeal was granted by Upper Tribunal Judge Martin on 23rd August 2013 for the reasons stated in the grounds.

Submissions

15. Mr Spence relied on his grounds and submitted that the judge had speculated when he had said that there was a logical explanation for the claimant concealing his presence from the health officials. If the judge had not found that he had been living with the family for nine or ten years he would have accorded the best interests of the children less weight.

16. Ms Khan submitted that the grounds amounted to a disagreement with the decision and the evidence overwhelmingly established that the claimant had been living with the family since 2004. He had provided a letter from the GP, giving the son's present

address, which stated that the claimant had been registered with the practice since September 2004. In his interview he said that he had been supported by his son since he had been in the UK. The independent social worker had observed his relationship with the children and come to a conclusion that it was plainly in the children's best interests that he should remain with them.

17. Mr Spence did not wish to reply.

Findings and Conclusions

18. The grounds amount to a disagreement with the decision but nothing more.

19. It was plainly open to the judge to conclude that the evidence established that the claimant had been living with his son and his son's family since 2004. There was not only the oral evidence of the witnesses which the judge was entitled to accept, but also the independent evidence from the GP and the social worker. The judge was entitled, in that context, to infer that the logical explanation for the claimant's presence not being revealed to health officials was because he was here unlawfully.

20. The evidence did not establish that there were other relatives who could help this family in the way that the claimant has done.

21. The judge plainly considered the Respondent's interests in the claimant's removal in some detail and concluded that there would be a significant public benefit attaching to it. However the assessment that the best interests of the British grandchildren outweighed the Secretary of State's interest in his removal was a judgment for him to make. The judge in a careful and thoughtful determination carefully weighed up all of the relevant factors and came to a conclusion open to him on the evidence.

Decision

22. The judge's decision stands. The claimant's appeal is allowed.

Signed Date

Upper Tribunal Judge Taylor