IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/06314/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 22nd October 2014	**On 30th October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AMOL PUJARI DHOTRE

Respondent

Representation:

For the Appellant: Ms L Ong, Home Office Presenting Officer
For the Respondent: Ms F Allen, Counsel instructed by Fisher Meredith

DECISION AND REASONS

1. The Respondent (hereinafter referred to as the Appellant) is a national of India. In a determination promulgated on 9th September 2013 First-tier Tribunal Judge Khawar allowed his appeal under Article 8 ECHR.

2. Grounds of application were lodged and permission was granted. That appeal was heard by Lord Boyd and Upper Tribunal Judge Allen who allowed the appeal "to the extent that it goes back to Judge Khawar at Hatton Cross for him to complete his determination by dealing with the point at paragraph 20 – the Chikwamba point. The rest of the determination can stand...".

3. The appeal did go back to Judge Khawar who issued a further determination promulgated on 2nd July 2014, again allowing the appeal under Article 8 ECHR.

4. Further grounds of application were made. It was said that the judge had not identified the Appellant's circumstances to be "compelling" (i.e. that refusal would amount to an unjustifiably harsh outcome) in some way. It was said the circumstances do not amount to something compelling or exceptional. Furthermore, it was not unreasonable in pursuit of a firm and coherent system of immigration control to require the Appellant to comply with the provisions of the Rules. While the Appellant may have satisfied the maintenance requirements as the judge had asserted it was clear that he could not satisfy those requirements at present owing to his lack of employment. As such the Rules were not met and he cannot bolster his claim under Article 8.

5. Permission to appeal was granted. A Rule 24 notice was lodged and the response, commencing at paragraph 11, was that the Appellant and his partner gave oral evidence and submitted a number of documents. In particular Mr Gul was in receipt of carers allowance and there were two Lloyds Bank letters showing savings of £10,000. There were bank statements from Mr Dhotre showing money deposits from his sister and brother-in-law.

6. The judge had considered the evidence and noted that the income plainly exceeded the income support entitlement of a couple and child.

7. Furthermore, family life subsisted and could not be continued in India due to the position of the partner's child.

8. Thus the matter came before me on the above date.

The Oral Hearing

9. For the Home Office Ms Ong relied on the grounds and Ms Allen relied on what was said in the Rule 24 notice. In addition Ms Allen referred me to paragraph 117B of the Immigration Act 2014 and the public interest considerations applicable in all cases involving Article 8. It was noteworthy that this was an Appellant who could speak English. He was not a burden on the taxpayer. In particular, in terms of 117B(6) this was a person who was not liable to deportation and the public interest did not require the person's removal where the person had a genuine and subsisting parental relationship with a qualifying child and it would not be reasonable to expect the child to leave the United Kingdom. It was said that there was no error in law and the determination should stand.

10. I reserved my decision.

Conclusions

11. What the judge did do was reconsider the matter in line with what was said by the Upper Tribunal. He noted that the Appellant's income plainly exceeded the income support entitlement of a couple with one child. Consequently the Appellant met the requirement relating to adequacy of maintenance as at the date of application. As such he noted that was even less reason to require the Appellant to return to India to make an entry clearance application.

12. The judge did note the oral evidence that the Appellant was currently unemployed but there were particular reasons for that as the Appellant only lost his employment with Deloitte Consulting due to the fact that his immigration status could not be clarified to his employers and he had voluntarily resigned. The judge made the point noting that he was highly qualified and was eminently employable. He went on to allow the appeal under Article 8 ECHR.

13. I cannot see that there is any error in the judge's findings and apart from referring me to the grounds, Ms Ong could not identify any particular error. It is plain enough that this is a family who should be together. I cannot see the public interest being benefited in any way by compelling the Appellant to return to India and make an application from there. The new Immigration Act under 117B(6) referred to above specifically makes this point saying that the public interest does not require the person's removal where that person has a genuine and subsisting parental relationship with a qualifying child (which applies in this case) and it is not reasonable to expect the child to leave here (which was accepted by the judge as she suffers from leukaemia).

14. It follows from these findings that there is no error in the determination and the decision must stand.

Decision

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

16. I do not set aside the decision.

Signed Date **30th October 2014**

Deputy Upper Tribunal Judge J G Macdonald