



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/19384/2013

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Birmingham
On: 21 July 2014
2014

Decision Promulgated:
On: 6 August

Before

Upper Tribunal Judge Pitt

Between

Faisal Abdul Ghaful Haji

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Vokes, instructed by Cartwright King Solicitors

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Kenya and was born on 23 October 1986.
2. This is an appeal by the appellant against the determination promulgated on 29 January 2014 of First-tier Tribunal Judge C J Lloyd which refused the appellant's appeal against the respondent's decision of 10 May 2013 refusing further leave to remain.

3. The background to this matter is that the appellant was born in Kenya. His immediate family lived as part of a larger family group of approximately 30 relatives occupying two large houses. The family operated a transport logistic business but later moved the operation to Dubai. In 2002 the appellant left Kenya and went to study in Dubai. He came to the UK in 2006 as a student with leave until 31 January 2010.
4. The appellant's father came to the UK on 30 December 2008 with leave as Tier 1 Entrepreneur and the appellant's mother and sister were dependents. Their leave ran until 1 December 2011 and, after an appeal, further leave was granted to them until 22 August 2016.
5. The appellant was too old to benefit from the grant of further leave until 22 August 2016 but on 19 January 2011 he was granted discretionary leave to remain (DLR) until 1 December 2011 as his father was undergoing heart bypass surgery. His application of 22 March 2013 for further leave was refused and that refusal underpins the appeal before me.
6. The refusal of 22 March 2013 maintained that the basis on which the appellant had been granted DLR was no longer in existence and so the appellant did not qualify for further DLR. He did not qualify for leave under Appendix FM or paragraph 276ADE of the Immigration Rules.
7. First-tier Tribunal Judge Lloyd found at [27] that the appellant did not qualify for further DLR under the policy relating to those granted DLR prior to 9 July 2012. She found that the grant of DLR had been made on the basis of the appellant's father's heart bypass operation in 2011 but that the evidence showed that his father had recovered and was working.
8. The evidence of the appellant's father in that regard is recorded at [16] and was that he was:

“... the overall manager of his food business and responsible for the paperwork but that his son did the day-to-day hard work. He had full-time staff and casual workers and was about to open a second shop but would need to downsize if his son did not stay in the UK.”
9. This is materially the same evidence given by other members of the family, including the appellant, in oral or written evidence.
10. The appellant challenges the factual finding as to his father's health and the conclusion that he did not qualify for further DLR under the policy.

11. The specific challenge to the factual finding that his father was in better health than previously was that Judge Lloyd erred in her approach to a letter dated 12 November 2013 from the father's GP, Dr Walker. This document is at page 104 of the appellant's bundle.
12. Dr Walker states that the appellant's father had "Chronic Kidney Disease stage 5" and that "his kidney function has deteriorated furthering the last eight months and he is likely to require renal dialysis fairly soon." The letter goes on to state that the father also suffers from diabetes which is treated with insulin, has a slip disc and confirms the heart bypass operation in 2010.
13. The letter from Dr Walker concludes thus:

"In recent times unfortunately Mr Haji's health has declined and because of this he suffers from the symptoms I describe above. This could have considerable impact on his ability to work."
14. It was not my view that Judge Lloyd's decision erred in its approach to this letter. It was specifically noted at [17]. If the appellant's father, consistent with the remainder of the family's evidence, as of the date of the hearing in January 2014 was more positive than that given by the GP, it seems to be that it was open to the judge to prefer the more recent and consistent evidence of the family. That evidence manifestly supported a conclusion that the father was able to work. He stated that he was intending to set up a second shop and confirmed that he would continue to work and run the business, albeit in a smaller way, even if the appellant did were not able to assist him. The First-tier Tribunal was not obliged to place more weight on the GP letter in the face of other, notably different evidence from the appellant and his family.
15. Further, the GP letter does not, in my view, support the appellant's case that his father remained as unwell as in 2010 when DLR was granted or unable to run his business such that it could have lead the First-tier Tribunal to conclude that the appellant qualified for further leave to remain under the policy or on any other basis.
16. According to Dr Walker, the father did not yet need dialysis. Nothing before the First-tier Tribunal suggested that the situation had changed as of January 2014. The GP specifically states that the father's health problems "could" impact on his ability to work, not that they did so. As above, the evidence before the First-tier Tribunal was that they did not impact so as prevent the father from working, expanding his business and expecting to continue to do so even if the appellant was not in the UK.

17. The “deterioration” referred to by Dr Walker was “recent” as of November 2013. This was not an indication that the father’s health had deteriorated still further from the very serious circumstances pertaining in 2010 and 2011 when he underwent heart bypass surgery. For the reasons given above, the “recent” deterioration was not, even on the basis of Dr Walker’s letter, let alone the evidence of the family, to a level that could show that the father was critically ill such that he could not work and the appellant had to run the family business, as in 2011.
18. For those reasons, I did not find that the First-tier Tribunal erred in finding that the appellant’s circumstances had changed since the grant of DLR as a result of his father’s heart bypass surgery and need for the appellant to run his business. The evidence clearly supported a finding that, even if the father, sadly, still has health problems, the situation had changed to the extent that the respondent acted lawfully in declining to exercise her policy regarding further DLR to those granted DLR prior to 9 July 2012.
19. Where that is so, the appellant’s other grounds which turn on the question of the health of the appellant’s father and need for the appellant to assist in the family business cannot found a successful error of law challenge.
20. It was open to Judge Lloyd to find at [32] that the appellant had not shown a relationship of such dependency with his father that family life for the purposes of Article 8 was established. It was open to her to find at [35] that there were not sufficiently compelling or compassionate circumstances here such that the decision amounted to a disproportionate interference even after a free-standing Article 8 proportionality assessment was conducted at [33] to [35].

DECISION

21. The decision of the First-tier Tribunal does not contain an error on a point of law and shall stand.

Signed: 
Upper Tribunal Judge Pitt

Date: 5 August 2014