



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/28019/2013

THE IMMIGRATION ACTS

Heard at Columbus House, Newport

**Decision & Reasons
Promulgated**

On 11 November 2014

On 02 December 2014

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**MEHDI M ANWARI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Singh instructed by Malik & Malik Solicitors
For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Afghanistan who was born on 24 September 1991. He arrived in the United Kingdom on 23 March 2011 with entry clearance as the dependent child of his mother and father valid until 23 May 2013. The appellant's father has been granted indefinite leave to remain.

2. On 26 April 2013, the appellant's mother made an application for further leave to remain as the partner of a settled person (namely the appellant's father) and her application was refused on 14 May 2013. On 16 May 2013, the appellant made an application for further leave to remain. On 5 June 2013, the Secretary of State refused the appellant's application on the basis of his relationship with his parents under para 298 of the Immigration Rules (HC 395 as amended) and also under para 276ADE of the Rules based on his private life.
3. The appellant appealed to the First-tier Tribunal. No oral hearing was requested and the appeal was determined on the papers. In a determination promulgated on 11 June 2014, Judge David C Clapham dismissed the appellant's appeal.
4. On 22 July 2014, the First-tier Tribunal (Judge PJM Hollingworth) granted the appellant permission to appeal to the Upper Tribunal on the basis that: "an arguable error of law has arisen in relation to the extent of the information available to the Judge which should have been available."

The Submissions

5. In his oral submissions, Mr Singh who represented the appellant, initially submitted that the judge had erred in law in proceeding to determine the appeal without sight of the respondent's bundle. However, Mr Singh accepted that argument could not succeed when I pointed out to him that the appeal file contained the respondent's bundle dated as received by the Glasgow Hearing Centre on 25 April 2014. The appeal was determined on the papers on 23 May 2014.
6. Whilst it is undoubtedly the case that when the appeal was initially listed for determination on the papers by Judge D'Ambrosio on 16 December 2013, he did not have a respondent's bundle and so declined to determine the appeal and directed the respondent to serve her bundle, it is clear that bundle was subsequently served on the Tribunal and received on 24 April 2014.
7. Instead, Mr Singh directed his submissions to a more general point that the judge had been wrong to rely on the limited information before the Tribunal and had made an error of fact in stating that the appellant had entered the UK in March 2011 as a visitor when, in fact, he had arrived as a dependent of his parents. As I understood his submission, he relied upon this as establishing an error of law in the judge's decision to dismiss the appellant's appeal under Art 8 of the ECHR. In addition, he relied upon the appellant's circumstances including that he had a parent and brother in the UK at the time of the hearing which should have led the judge to allow the appeal under Art 8 on the basis of an interference with the appellant's family life.
8. On behalf of the Secretary of State, Mr Richards accepted (as had been done in the rule 24 reply dated 13 August 2014) that both the

respondent's decision and the judge had wrongly recorded that the appellant had entered as a visitor in 2011. Nevertheless, that error was not material to the judge's decision to dismiss the appeal under Art 8.

Discussion

9. This appeal was determined on the papers because the appellant did not request an oral hearing. On 14 October 2013, the First-tier Tribunal wrote to both the appellant and respondent indicating that any written evidence and submissions should be sent to the Tribunal by 11 November 2013. It would appear that the appellant submitted no evidence beyond that attached to his application form. On that form the appellant gave very limited information. He stated he was living with his parents in England as an "adult dependant"; that he could not live in any other country without his parents; and he only had uncles in Afghanistan. His grounds of appeal to the First-tier Tribunal are in the most general terms, asserting that the respondent failed to take into account all relevant circumstances and arrived at a decision without due consideration of all the evidence. The grounds conclude:

"The appellant intends to particularise each ground further at the hearing of the appeal and such other and further grounds may be urged at the hearing of this appeal."

10. Of course, there was no hearing of the appeal because the appellant did not request an oral hearing. No further information was submitted.
11. Mr Singh accepted that it was for the appellant to produce relevant evidence but he reminded me that the appellant was not represented at the time of the First-tier Tribunal hearing and his current representatives had only been instructed two weeks ago. Although, Mr Singh accepted that his representatives had been involved in drafting the grounds of appeal to the Upper Tribunal which assert that the First-tier Tribunal erred in law in finding that there was no "family life" between the appellant and his family in the UK.
12. In my judgment, the criticism of Judge Clapham's determination is without merit. Whilst it is true that he mistakenly states that the appellant entered as a visitor on 23 March 2011, he was clearly aware that the appellant had been in the UK since that date and there is no suggestion in his determination that he considered that the appellant had been here unlawfully (which of course he had not been) at any time since that date. The fact is that the appellant was admitted as a dependant of his mother and father at a time when his application was made before he reached adulthood. Indeed, Judge Clapham specifically refers to that being the appellant's case at para 5 of his determination.
13. At paras 6-10 of his determination, Judge Clapham gave the following reasons for dismissing the appeal:

- “6. I do not have as much information as I would expect to have in a case of this kind. As the appellant is now 22 years of age I would have expected to see some indication from him as to why he did not consider he would be able to lead a life independent of his parents. The Grounds of Appeal say that the respondent arrived at a decision without due consideration of all the evidence furnished in respect of the matter but I am not clear as to what information it is that the appellant says was furnished but was not considered by the respondent.”
7. Although the appellant says the respondent has failed to have regard to the appellant’s unique circumstances I am not clear as to what it is that makes the appellant’s circumstances unique. The respondent’s decision is said to be contrary to the provisions of the ECHR but I am not clear as to how the appellant suggests that the respondent has disregarded ECHR and it will be remembered that Article 8 which gives the right to respect for private and family life does not confer an absolute right. There is a proportionality test.
8. The Grounds of Appeal say that the respondent failed to give consideration to the relevant matters but I am not clear as to what relevant matters it was that the respondent did not consider. The Grounds of Appeal say that the respondent has allowed herself to be influenced by irrelevant facts but there is no indication as to what these are. The Grounds of Appeal also say that it is the intention of the appellant to particularise each ground at the hearing of the appeal but my understanding is that the appellant has indicated he wishes this case to be decided on the papers.
9. The reasons for refusal letter sets out why the appellant’s case does not meet the requirements of the Immigration Rules and I do not have information in front of me to suggest that the appellant would in fact meet the requirements of the Immigration Rules or, alternatively, would have a good arguable case outside the Immigration Rules.
10. As this appeal has been outstanding for some time I am not persuaded that there would be any point in doing anything other than making a decision. The appellant in his letter of 16th April 2014 has asked not to be put in limbo. I note that the appellant’s letter says that he needs to go to university, to work and pay tax but however meritorious these intentions are I do not consider that these matters on their own are sufficient to allow me to conclude that the respondent has made a decision that she was not entitled to make.”
14. As the judge noted, the appellant was 22 years of age. Whilst an adult child may be able to establish family life with his or her parents (see for example Ghising [2012] UKUT 00160 (IAC)), the appellant produced no evidence to show that at 22 years of age the nature of his relationship with his parents was such as to demonstrate continued dependency upon them other than his bald assertion that he lived with them. Even that was not supported by any independent evidence.
15. Mr Singh was unable to identify to me, when asked to do so, any relevant material which the judge had failed to consider. The grounds refer to a copy of a 2008 appeal determination but Mr Singh placed no reliance upon it but I was not shown a copy of that determination and it is not in the appeal file.

16. It is not suggested that the appellant can meet the requirements of any Immigration Rule. He clearly cannot. Given the almost total absence of any evidence to support his Art 8 claim, it was inevitable that his appeal relying upon a claim outside the Rules would be dismissed. There simply was no basis for concluding that the appellant's circumstances involved any interference with his private and family life such that his removal would result in unjustifiably harsh consequences (see MF (Nigeria) v SSHD [2013] EWCA Civ 1192 and R (Nagre) v SSHD [2013] EWHC 720 (Admin)).
17. For the above reasons, the First-tier Tribunal's decision to dismiss the appellant's appeal did not involve the making of an error of law. The decision stands.

Decision

18. The appellant's appeal to the Upper Tribunal is, accordingly, dismissed.
19. No anonymity direction is made.

Signed

A Grubb
Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

A Grubb
Judge of the Upper Tribunal