



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/46272/2013

THE IMMIGRATION ACTS

Heard at Field House
On 5th September 2014

Determination Promulgated
On 9th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR WELCEL CAGURIN
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer

For the Respondent: Mr A Burrett, Counsel, instructed by Kent Immigration and Visa Advice

DETERMINATION AND REASONS

Introduction

1. Although this is an appeal by the Secretary of State I will refer to the parties as they were before the First-tier Tribunal.

2. The appellant is a citizen of the Philippines born on 5th March 1978. He arrived in the UK on 27th August 2012 as a student. He applied for further leave to remain as the carer of his grandmother. This application was refused on 22nd October 2013, and he appealed. His appeal against this decision was allowed under Article 8 ECHR by First-tier Tribunal Judge IA Lewis in a determination promulgated on the 3rd June 2014.
3. Permission to appeal was granted by Judge of the First-tier Tribunal Cruthers on 14th July 2014 who said that: "I suspect that there is little substance in at least some of the complaints made in the grounds. Contrary to paragraph 2 of the grounds, for instance, the determination under consideration is peppered throughout with references to the "new article 8 rules" brought into effect from 9th July 2012." However permission was granted on the basis that it was arguable that the First-tier judge had erred in allowing on the basis of Article 8 ECHR outside of the Immigration Rules.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions

5. Mr Nath relied upon the grounds of appeal. These contended as follows: that consideration had not been given to whether the appellant could succeed under the Immigration Rules relating to Article 8 ECHR; that the Tribunal had not identified "compelling circumstances" as required by Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640 to embark on a consideration of Article 8 ECHR outside of the Immigration Rules and then had not identified why the refusal of leave would be "unjustifiably harsh"; further the Tribunal had not identified why the appellant could not follow the normal route regarding obtaining entry clearance to join his fiancée in the UK or why a carer could not be employed for his grandmother. I asked Mr Nath to point to the paragraphs in his determination where Judge IA Lewis made legal errors but he could not do so.
6. I told Mr Burrett that I did not need to trouble him for submissions as I was satisfied that there were no errors of law in the determination of Judge IA Lewis which I found was written to the highest standards of legal correctness.

Conclusions

7. As noted by Judge Cruthers, Judge IA Lewis correctly considers the appeal firstly under the Immigration Rules relating to Article 8 ECHR and then goes on to consider the matter under the general law relating to Article 8 ECHR. His findings and conclusions section runs to 14 pages of clear and concise argument dealing with all factual issues raised.
8. Judge IA Lewis guides himself correctly with reference to Gulshan from paragraph 14 of his determination when he starts his consideration of whether he needs to look at the matter with reference to Article 8 ECHR outside of the

Immigration Rules. He concludes by giving cogent reasons as to why consideration should be given in this way at paragraph 30 because of the accumulation of issues in this case.

9. Judge IA Lewis agrees that if it were simply a matter of the relationship between the appellant and his fiancée, despite the positive findings he makes about their relationship and their actual financial situation, that given they cannot meet the Immigration Rules or show that there are insurmountable obstacles to their family life continuing outside of the UK, that the appeal cannot succeed on this basis (see paragraph 28 of the determination).
10. However Judge Lewis finds that it would have unjustifiably harsh to require the appellant to leave principally because of the care and support provided by the appellant and his fiancée to his grandmother. He identifies this relationship as being one of “family life” given the degree of dependency between the appellant and his grandmother (see paragraph 40). At paragraph 39 he considers whether this might be provided by an alternative carer (Social Services) but concludes that this is not simply a matter of high level practical support but is : “a very high level of emotional support to an elderly lady perceiving her physical condition to be degenerating and anxious about plainly unsettling and frightening symptoms of her lung disease.”
11. I find no legal errors in the determination of Judge Lewis.

Decision

12. The decision of the First-tier Tribunal did not involve the making of an error on a point of law.
13. The decision of the First-tier Tribunal allowing the appeal under Article 8 of the ECHR is upheld.

Deputy Upper Tribunal Judge Lindsley
8th September 2014