



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/49184/2013

THE IMMIGRATION ACTS

Heard at Field House
On 1 August 2014

Determination Promulgated
On 2 October 2014

Before

Upper Tribunal Judge Kekić

Between

**Mark Azer
(Anonymity order not made)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr M Symes, Counsel

For the Respondent: Mr S Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following the grant of permission to appeal by First-tier Tribunal Judge Simpson on 6 June 2014.
2. The appellant is a citizen of Egypt born on 27 January 1984. He arrived here as a student on 7 October 2008. Shortly before his visa expired, he was granted leave to remain as a spouse until 15 November 2012. The marriage broke down and on 1 November 2012 the appellant sought leave to remain on Article 8 grounds. That was refused on 5 November 2013.

3. First-tier Tribunal Judge Edwards heard the appeal on 13 May 2014 and dismissed it by way of a determination promulgated on 16 May 2014.

Appeal hearing

4. I heard submissions from the parties in the presence of the appellant.
5. Mr Symes relied on his grounds and elaborated on the nature of the appellant's private and family life. No claim for asylum was being made. He submitted that the determination showed no appreciation for the extent and nature of the appellant's life here as had been put forward in the documentary evidence. The finding at paragraph 24c, as regards the availability of additional evidence, was unreasoned, the observations at paragraph 26 were legally inadequate and the reference to the letter from the consultant being "peculiarly phrased" was irrational and unreasoned. In paragraph 27, the judge missed the point completely; the case was not that Mrs Boutros would be able to access health care without the appellant but that she looked upon him as the son she had never had and that they had developed a close bond. There was no consideration by the judge as to whether their relationship involved an emotional dependency beyond the norm. The determination was an inadequate consideration of the issues and could not stand.
6. Mr Walker pointed out that it had been conceded that the appellant could not meet the requirements of the Immigration Rules. The judge approached the case with Gulshan in mind. That set out a high test for an Article 8 claim outside the rules. Country guidance did not establish that discrimination faced by Coptic Christians in Egypt reached the Article 3 test. Paragraph 24c was perhaps poorly worded but the determination did not contain any material errors of law.
7. In response, Mr Symes submitted that the strength of the case was not at all apparent from the determination. He submitted that this was an appropriate case for remittal to the First-tier Tribunal as the issues raised by the appellant had not been properly assessed.
8. At the conclusion of the hearing I reserved my determination which I now give with reasons.

Conclusions

9. Mr Symes is right when he says that the nature of the appellant's case is not apparent from the determination and that the judge's findings are largely unreasoned. Whilst it is not at all clear from the evidence, however, that the appellant's case is strong enough to entitle him to a grant of leave outside the rules, it does at the very least call for a more thorough analysis than is apparent from this determination.
10. It is plain that the appellant's performance as a witness did not impress the judge who complains of his "long rambling answers", none of which are recorded in the

determination or indeed in the Record of Proceedings which does not reflect this complaint. It is unfortunate that his representative did not steer him more effectively through the evidence but, notwithstanding that, the determination is a cursory consideration of several elements of a private, if not family, life established at a time when the appellant had leave to remain and an expectation that he was going to remain here for the rest of his life.

11. I am in agreement with Mr Symes and Mr Walker that the wording of paragraph 24c leaves much to be desired and that it shows inadequate reasoning. No reasons at all have been given in the very brief rejection of part of his claim at paragraph 25. The 'mother-son' relationship he has with Mrs Boutros has not been properly considered and there is no regard to their emotional bond and reliance upon each other. The judge does not explain why in paragraph 26 he refers to the consultant's letter as "peculiarly phrased". On the face of it, it is a letter corroborating the support the appellant has given Mrs Boutros. If the judge had issues with it, it was incumbent upon him to clarify what they were. The comments in paragraph 28 are unreasoned and appear to reject what was initially acknowledged in the same paragraph. There is no consideration of the appellant's employment, studies or involvement in the South Kensington Coptic Church.
12. I have therefore reached the conclusion that the determination is flawed due to its inadequate reasoning and the failure to properly consider the claim that the appellant put forward. I take note of Mr Walker's submission that the appellant could not qualify within the rules and that the judge had the guidance of Gulshan in mind. I do not say that this is a strong case or that it is likely to succeed. Indeed, it is difficult to win on Article 8 grounds where one cannot succeed under the rules. However, an appellant has the right to have his appeal determined properly and the determination in this case does not adequately reflect the nature of the case or provide any reasoned arguments for the conclusion that it does not warrant a grant of leave outside the rules.

Decision

13. The decision of the First-tier Tribunal is set aside. The appeal shall be re-heard by another judge of the First-tier Tribunal with a view to re-making the decision.

Anonymity

14. No order for anonymity has been requested or made.

Signed:

Dr R Kekić
Upper Tribunal Judge

Date: 1 August 2014