



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/53050/2013

**THE IMMIGRATION ACTS**

Heard at Glasgow  
on 22<sup>nd</sup> July 2014

Determination promulgated  
on 24<sup>th</sup> July 2014

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ROBERT CHRISTOPHER PITTER

Respondent

For the Appellant: Ms S Hoey, of Drummond Miller, Solicitors  
For the Respondent: Mrs S Saddiq, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The parties are as described above, but are referred to in the rest of this determination as they were in the First-tier Tribunal.

2. Judge Watters allowed the appeal under Article 8 of the ECHR, outwith the Immigration Rules, on the basis of strong family ties among the Appellant and the three daughters of his late wife, who died on 5<sup>th</sup> April 2012.
3. The SSHD's grounds of appeal are that the judge did not consider Gulshan [2013] UKUT 640 and Shahzad [2014] UKUT 85, amounting to a material error of failure to consider "the case specific guidance on departing from the Rules and further considering Article 8".
4. The Presenting Officer submitted as follows. At the crucial part of the determination, ¶16, the judge failed to consider the correct legal approach to Article 8. He did not clearly identify any good reasons or compassionate circumstances for going outside the Rules. She accepted that he did acknowledge "the legitimate need to maintain an effective national immigration policy". She pointed out that at the time of the hearing the Appellant was living in London not in Edinburgh and had been living separately from the persons on whom his claim was based. He had only ever lived with one of the three stepdaughters. There was no element of dependency going beyond normal emotional ties among adults. Although the judge found "strong family ties" he had not considered the correct legal test. The Appellant's circumstances at the date of the hearing were sad but not unusual, and the judge was not entitled to find that the decision led to unjustifiably harsh consequences. Mrs Saddiq accepted that the grounds did not go so far as to say that the decision was irrational and outwith the scope of any judge, but she said that the essence of the grounds was that the appeal could properly only have been dismissed, so she asked for the decision of the First-tier Tribunal to be reversed.
5. Ms Hoey submitted as follows. The appellant put his case as one of good grounds for granting leave outside the Rules by reference to Article 8, and the whole determination was written on that basis. The point was clear from the phrasing of the final sentence of ¶16. Having heard and carefully examined the evidence the judge thought there was good reason for looking outside the Rules. The conclusion that there were strong family ties among the Appellant and his three stepdaughters was properly open to him. Although not reflected in the determination, there had been submissions on the tests for finding family life to exist among adults, including reference to Kugathas [2003] INLR 170 and to ZB (Pakistan) [2009] EWCA Civ 834. The judge was presumed to know the law and to apply the correct test, particularly when he had been reminded of it in submissions. He was not required to set out all the applicable law. All three stepdaughters had given oral evidence in the First-tier Tribunal. That included evidence of the Appellant's relationship with three children, considered to be his grandchildren. The Upper Tribunal should not go behind the assessment reached by the judge who had heard the oral evidence. The reasons for the Appellant leaving Edinburgh had been explained in evidence. He had support from his brother there. His moving away made it easier for the youngest stepdaughter, who had previously been part of the household of the Appellant and his late wife, to find her own accommodation. A weighty factor was that none of the three stepdaughters had significant links with their biological father. There was no

error such as to require the determination to be set aside. If it were to be set aside, it should not simply be reversed. The evidence should firstly be updated.

6. At this point, under reservation of the error of law issue, I heard brief evidence from the Sponsor. He now lives in his own accommodation in Edinburgh, close to his three stepdaughters. He sees all of them, and the three grandchildren, at least twice a week. He is presently legally able to work, but due to his uncertain longer term status he has not been able to find permanent employment. He has had job offers, and believes he could find regular work once his status is secure. He presently earns around £250 per week from casual jobs.
7. Questioned by the Presenting Officer, the Appellant said that he moved back to Edinburgh about six weeks ago. His long term aim is to live in Edinburgh, close to those persons he considers to be his family.
8. In reply to the submissions for the Appellant, the Presenting Officer said that if the case did reach the stage of remaking the decision by reference to the updated evidence, the criteria in ZB and other cases on family life among adults suggested that the appropriate finding would be that family life does not exist for Article 8 purposes.
9. I indicated that the SSHD's appeal to the Upper Tribunal would be dismissed.
10. The judge might have referred to the criterion that family life is not generally to be found among adult relatives unless something more exists than the normal emotional ties. However, the SSHD's grounds do not say that the judge was not entitled to reach the finding he did on the existence of strong family ties. In any event, I consider that the judge was entitled to make that finding, under the circumstances mentioned above and (in more detail) in the First-tier Tribunal determination.
11. A judge does not have to quote any case law, so long as it is clear that he applied the correct guiding principles. It was obvious throughout the hearing that this case turned on whether it could be considered and allowed outwith the Rules. In his concluding two sentences the judge relates his conclusions to the tests of good grounds for granting leave outside the Rules, and of refusal resulting in unjustifiably harsh consequences. I find no error of the judge wrongly instructing himself on the law.
12. The judge's findings on the underlying primary facts are not in any way erroneous. He had the benefit of hearing the oral evidence of all adult family members. The criticism that the ultimate judgement he reached, based on those facts, was not properly open to him is not raised by the grounds squarely, if at all. It aims at showing an error of perversity, a high target.

13. The decision in this case might not be one which every judge would have reached, and some might think it generous, but I do not think it is one which no reasonable judge, having properly instructed himself on the law, could have come to. The grounds are not really more than disagreement with the outcome, dressed up under an error of law heading.
14. The determination of the First-tier Tribunal shall stand.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

23 July 2014  
Upper Tribunal Judge Macleman