



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

Appeal Number: VA/12262/2013

THE IMMIGRATION ACTS

Heard at Field House

On 3 July 2014

Determination

Promulgated

On 15th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

CHANDRAKANT MANILAL CHAUHAN

Appellant

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: No representation

DETERMINATION AND REASONS

1. The respondent, whom I shall refer to as the appellant as he was in the proceedings before the First-tier Tribunal, is a citizen of India and his date of birth is 5 August 1977. He made an application to visit the UK in order

to visit is aunt who was not in good health. His application was refused by the Entry Clearance Officer in Mumbai on 20 June 2013.

2. The appellant indicated that he intended to stay in the UK for a period of two months. He works in India as a carpenter. His cousin, Naina Chauhan, would sponsor him. She intended to maintain and accommodate him during his visit. With the appellant's application he submitted, amongst other documents, a letter dated 2 April 2013, from the hospital, indicating that his aunt had "advanced renal insufficiency".
3. The application was refused by the ECO under the Immigration Rules (paragraph 41(i), (ii), (iii) and (vi)). The appellant appealed and his appeal was allowed under article 8 by Judge of the First-tier Tribunal Trevaskis. The Judge made the following findings at [10] of the determination:

"I am satisfied that to the extent that the appellant may, as a foreign national resident outside the European Economic Area, be entitled to the protection of Article 8. The respondent's decision is an interference with the family life that the appellant may share with her relatives in the United Kingdom; I find that the appellant is a member of a large and close-knit family, and has many relatives in the United Kingdom; his cousin and her husband are well established members of the community who are willing and able to host him for his visit; it is important that his elderly relatives are able to be visited by their family members, particularly if they are near; the end of their lives; I find that the refusal of the appellant's application is a disproportionate interference with the appellant's right enjoy family life, and will have a significant impact on other members of his family, particularly his aunt. I hope that his visit will be able take place while she is still able to benefit from it."

4. The appeal was allowed by Judge of the First-tier Tribunal Trevaskis having determined the matter on the papers on 11 November 2014 in accordance with the appellant's wishes. There was no statutory appeal under the Immigration Rules, but the grounds of appeal before the First-tier Tribunal raised article 8 of the 1950 Convention on Human Rights. Permission to appeal was granted to the Secretary of State by Judge of the First-tier Tribunal Molloy in a decision of 22 May 2014. Thus the matter came before me.
5. Before the First-tier Tribunal Judge there was an appellant's bundle which included amongst other documents a letter from the sponsor, Naina Chauhan, of 15 July 2013. Her evidence was that it was the right of her elderly parents and her aunt to see their nephew, the appellant, at the end of their lives. The appellant is self-employed and he earns 12,000 rupees per month. He receives this in cash and the money is spent on a day-to-day basis. His income is below the reporting limit for Indian tax purposes. The appellant has assets in India. The sponsor is a deputy head of a primary school and her husband is a chartered tax advisor. The appellant

wishes to pay his respects to his elderly aunt. The sponsor's parents in the UK supported the appellant until he became independent. There are close family bonds between the appellant and his relatives in the UK. The sponsor's father built a house for the appellant's family in India.

The Grounds Seeking Leave to Appeal and Oral Submissions

6. The grounds seeking permission to appeal argue that there is no family life in the sense of **Kugathas v SSHD [2003] EWCA Civ 31**. There is no evidence that an inability to visit would have a significant impact on other family members as found by the Judge. There were no findings under the Immigration Rules and the decision was not in accordance with **Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC)**.
7. Mr Bramble made oral submissions in the context of the permission application. The sponsor did not attend the hearing before me and the appellant was not legally represented. The appellant faxed submissions to the Tribunal and I have considered these. The thrust of them being that the Judge did not make an error of law. I noted that there had been an application to adjourn today's hearing made by the appellant which had been refused by another Judge and this application was not renewed before me.

Conclusions

8. In my view the Judge erred in law for the reasons outlined in the grounds seeking permission to appeal. He misdirected himself in relation to article 8. The error is material and I set aside the decision pursuant to Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and I remake the decision pursuant to Section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007. There is no statutory appeal under the Immigration Rules. The Judge accepted the evidence of the sponsor contained in the letter of 15 July 2014 and there is no reason for me to go behind the positive findings that he made. These are not challenged in any event by the Secretary of State.
9. The Judge should have gone on to consider whether there are arguably good grounds for granting leave to remain outside the Immigration Rules in accordance with **Gulshan**. The appellant wanted to visit his aunt and uncle in the UK. It is the case that the family are close and at some stage the appellant's uncle here in the UK has taken a paternal role towards him. However, the appellant is an adult and the evidence before the First-tier Tribunal and before me does not establish that there are arguably good grounds for granting leave to remain outside the Immigration Rules on the basis of the appellant wishes to visit his elderly relatives here.

10. However, if I am wrong about that it would not be material because in order to engage Article 8(1) I would have to consider whether there is a family life which would engage the 1951 Convention on Human Rights. The fact is that the appeal concerns the relationship between an applicant and his aunt and uncle. It is a relationship between adults.
11. In **Kugathas v SSHD [2004] EWCA Civ 31** which was a case that concerned an adult's relationship with his mother and adult siblings the Court of Appeal thought that the following passage in **S v United Kingdom [1984] 40 DR196** was still relevant.

“Generally the protection of family life under Article 8 involves cohabiting dependants such as parents and their dependent minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults ... would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency involving more than the normal emotional ties.”
12. The evidence of the sponsor was accepted by the First-tier Tribunal but it does not establish that there are further elements of dependency involving more than the normal emotional ties. There is no evidence relating to how often the appellant sees his relatives in the UK. There was no evidence of the quality of the relationships at the date of the decision. In this case article 8(1) is not engaged.
13. The appeal should be dismissed accordingly. The appeal of the Secretary of State is allowed and the decision of the First-tier Tribunal is set aside. I remake the decision and dismiss the appellant's appeal under Article 8 of the 1950 Convention on Human Rights.

Signed

Joanna McWilliam

Date 15 July 2014

Deputy Upper Tribunal Judge McWilliam