



IAC-CH-AP-V1

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

Appeal Number: IA/01285/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 1st September 2015**

**Decision & Reasons Promulgated
On 17th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR AMAN ESMATULLAH AMAN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer
For the Respondent: Mr I Graham, Counsel

DECISION AND REASONS

Introduction

1. The Appellant Secretary of State for the Home Department appeals a decision of First-tier Tribunal Judge Lal in which he allowed the claimant's appeal on Article 8 grounds outside of the Immigration Rules.
2. The Secretary of State's grounds complain that the judge:

- (i) failed to give an adequate explanation as to why this adult Appellant's relationship with his adult siblings in the United Kingdom engaged Article 8,
 - (ii) failed to take as the starting point in an assessment of proportionality that the Appellant did not meet the dependent adult relative requirements of Appendix FM, or the private life requirements at paragraph 276ADE(vi) so as to attach the appropriate weight to the Immigration Rules as particularised within Section 117 of the 2002 Act.
3. Mr Graham for the claimant submitted that it was implicit in the fact that the judge only considered Article 8 outside of the Rules that the judge fully appreciated why the claimant did not meet the requirements of the Rules. The claimant's Article 8 Grounds of Appeal had been remitted for consideration by the first Tribunal because the judge who had heard the asylum Grounds of Appeal had simply failed to consider Article 8. There was ample evidence before the judge to justify the finding that the removal decision was disproportionate bearing in mind the age of the claimant, the fact that he had entered the United Kingdom as an unaccompanied minor in November 2011 and had lived with his brother and his family with limited leave pursuant to the Secretary of State's policy until adulthood. There was no need for the judge to particularise the impact of separation on the claimant or on his family members here in the United Kingdom. The position in Afghanistan was difficult. The safety of an individual depended on the network which was around them. The claimant had been here for some time and would be considered as westernised on return. Not surprisingly the claimant is frightened of the Taliban. Although technically an adult he is immature, ill-equipped to survive in the hostile environment of Afghanistan and whilst it could not be said that there would definitely be animosity if he was recognised as having spent time in, and returned from, the west, it was a reasonable fear.
4. Both representatives were of the view that in the event that I found an error I was in a position to remake the decision on the basis of the documentary bundles before the First-tier Tribunal.
5. In the context of this claimant's Article 8 private and family life that includes a recognition that on return to Afghanistan he would not, in the context of paragraph 276ADE(vi) face very significant obstacles to integration. Further arguments concerning the claimant's vulnerability on return to Afghanistan were dealt with in his asylum appeal when it was found that he was not at any real risk as part of a particular social group based on his youth and vulnerability.
6. The remittal to the First-tier made it plain to the claimant that his case was being remitted to give him the opportunity of fully arguing his Article 8 case and producing his evidence.

7. In the event the only evidence the claimant provided was the documentary evidence of the application, namely a few letters from fellow students of the time attesting to his personable nature and sporting endeavours, and a letter in similar form from his ESOL 16-18 programme course tutor. At the hearing before the judge the claimant's brother was absent in Afghanistan, and although he has a sister here who provided a witness statement saying she was supportive of the appeal she did not attend in person. The written statement evidence clearly shows that both the brother and sister of the claimant would like him to stay here. Their desire is underlined by the fact that the brother was a Sponsor in a failed earlier application to bring the claimant and his sister who remains in Afghanistan, to the United Kingdom as his dependants, an application which was refused.
8. The claimant is a young, single man who has family in Afghanistan as evidenced by the fact that on the date of hearing before the First-tier Tribunal his brother from the United Kingdom was visiting Afghanistan, attending a funeral, and who could expect to continue to receive financial support from the same family relatives who had been providing it to him whilst he has been here between November 2011 and December 2012, the date of the decision.
9. The reality is that this claimant has no claim to be in the United Kingdom, the fact that he has had the benefit of a year's residence in his brother's household having arrived in the United Kingdom illegally, has provided him with an opportunity to re-establish ties with his brother and sister here but the character and quality of those ties does not of itself create any additional entitlement, or give rise to a proper basis upon which to allow an appeal on Article 8 grounds outside of the Rules.
10. I am satisfied that the decision of the First-tier Tribunal contains a material error of law in failing to recognise that the weight to be given to the public interest as reflected in the requirements of the Immigration Rules means that there must be something in the claimant's family circumstances which operates to elevate his position to one which shows that the application of the Rules does not provide an adequate answer to his circumstances. On the scant evidence before the Tribunal there was no proper evidential basis so to conclude.
11. For all the reasons above I allow the Secretary of State's appeal. I find that the decision of the First-tier Tribunal is vitiated by material legal error and is set aside and I remake the decision dismissing the Appellant's appeal on Article 8 grounds.
12. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Davidge

TO THE RESPONDENT
FEE AWARD

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

Signed

Date

Deputy Upper Tribunal Judge Davidge