Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/11495/2014

THE IMMIGRATION ACTS

Heard at : Field House	**Determination Promulgated**
On : 22 January 2015	**On: 28 January 2015**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ABOO SAWLEY SEYEDCHANE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bruiyan, instructed by Universal Solicitors
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Mauritius, born on 4 December 1969. He has been given permission to appeal against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to remove him from the United Kingdom.

2. The appellant arrived in the United Kingdom on 23 October 2011 and was given leave to enter as a visitor. His son, then aged 15 years old, arrived in the United Kingdom on 28 December 2011, also as a visitor. Both decided to stay after the expiry of their period of leave and on 12 October 2013 an application was made on behalf of the appellant for leave to remain on Article 8 grounds, with his son as his dependant. The application was refused on 16 December 2013 and a decision was made on 26 February 2014 for his removal to Mauritius.

3. In refusing the appellant's application, the respondent considered the immigration rules relating to family and private life but concluded that he met the criteria of neither. With regard to Appendix FM and EX.1, the respondent accepted that he had a genuine and subsisting relationship with a child, but noted that the child was not British and had not lived in the United Kingdom for seven years. With regard to paragraph 276ADE it was not accepted that the appellant had lost all ties to Mauritius. It was not considered that there were any exceptional circumstances justifying a grant of leave outside the rules.

4. The appellant appealed against that decision. His appeal was heard in the First-tier Tribunal on 6 October 2014 by First-tier Tribunal Judge Shamash. The judge heard oral evidence from the appellant and had before her a statement from the appellant's brother with whom he and his son resided and upon whom they claimed to be dependent. She recorded the appellant's evidence that he was the primary carer for his son and that he had suffered domestic violence at the hands of his ex-wife which had adversely affected his son and had led to them both not wishing to return to Mauritius. The appellant's oldest son was also in the United Kingdom and both sons were musicians, playing rock music, which would was not culturally acceptable in Mauritius.

5. It was accepted on behalf of the appellant that he could not succeed under the family or private life immigration rules, namely Appendix FM and paragraph 276ADE and the appeal was therefore pursued in the wider Article 8 context. The judge noted that the appellant's son was no longer a minor, but was 18 years of age, and concluded that there was no family life between them for the purposes of Article 8. Neither was it accepted that family life existed between the appellant and his brother or on any other basis. The judge considered that any interference with the appellant's private life would not be disproportionate and that his removal would not breach Article 8. She dismissed the appeal.

6. Permission to appeal was granted on 16 December 2014 in relation to the judge's findings on family life between the appellant and his son and also with respect to his proportionality assessment.

Appeal hearing and submissions

7. At the hearing the appellant was in attendance but was not required to give oral evidence. I heard submissions on the error of law.

8. Mr Bruiyan submitted that whilst the judge had quoted from the relevant provisions of the rules and case law, she had failed to apply those provisions. She found that there was no private life, yet there were aspects of private life that she ought to have considered, such as the appellant's brother and his sons studying in the United Kingdom.

9. Mr Nath submitted that the judge had conducted a full and proper analysis of the facts in the context of the law and relevant case law and had considered the well-being of the appellant's son who was by then in any event no longer a minor. There were no errors of law in her decision.

10. Mr Bruiyan responded by submitting that the judge had failed to make findings of fact and had not considered the fact that the appellant's son had not had any removal directions issued against him. The stages in R (Razgar) v SSHD (2004) UKHL 27 had not been followed.

11. I advised the parties that in my view there was no error of law in the judge's decision and my reasons for so finding are as follows.

Consideration and findings

12. I fail to see any merit in Mr Bruiyan's criticism of the judge's fact-finding and application of the law. It seems to me that, on the contrary, her decision is a detailed and thorough one including a careful assessment of the appellant's circumstances and a full and proper application of the relevant case law and statutory provisions to the facts. It was accepted on behalf of the appellant that he could not meet the requirements of Appendix FM and paragraph 276ADE of the rules and accordingly it was for him to demonstrate the existence of any particular compassionate or other circumstances justifying a grant of leave outside the rules. For reasons cogently given the judge, having taken into account all relevant matters and having considered the appellant's family and private life ties to the United Kingdom, was entitled to conclude that no such circumstances existed.

13. The judge considered the relationship between the appellant and his son and was entitled to place weight upon the fact that his son was no longer a minor. She specifically took into account that no removal directions had been set for his son but properly found that his son nevertheless had no basis of stay in the United Kingdom and could return with him to Mauritius. At [19] she considered his son's circumstances in the United Kingdom and those to which he would return in Mauritius. At [20] she considered other family relationships but again properly found that no family life existed for the purposes of Article 8. Whilst it may be that it was open to the judge to conclude that private life had been established in the United Kingdom, contrary to her finding at [20], nothing material arises in that regard given that she went on to consider proportionality on the basis that private life had been established. She took account of the new statutory provisions in section 117B of the Nationality, Immigration and Asylum Act 2002 and found, as she was entitled to do, that

the appellant's claim could not succeed and that it was indeed an extremely weak one.

14. Taken as a whole, the judge's determination contains a detailed and thorough assessment of the appellant's circumstances and the interests and circumstances of his son, together with clearly and cogently reasoned findings properly open to her on the evidence before her. The grounds of appeal disclose no errors of law in her decision.

DECISION

15. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed

Upper Tribunal Judge Kebede