IAC-PE-AW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/12036/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 27th January 2015	**On 25th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

MR TABASSAM JANJUA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Iqbal - Counsel
For the Respondent: Mr P Nath – Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Mr Tabassam Janjua, a citizen of Pakistan born 18th March 1977. He appeals against the determination of First-tier Tribunal Judge Nicholls issued on 22nd October 2014 dismissing under the Immigration (European Economic Area) Regulations 2006 (the EEA Regs) and the Immigration Rules and on human rights grounds, the appeal of the Appellant against the decision of the Respondent made on 5th February 2014 to refuse to grant him a residence card as evidence of a derivative right of residence in the UK.

2. He submitted in the grounds seeking permission that Judge Nicholls erred in his interpretation of Regulation 15A in particular in his understanding of the word "unable". It is submitted that he imposed a higher standard. It is submitted that he failed to properly apply the legal principles set out at paragraph 67 of **Harrison (Jamaica) [2012] EWCA Civ 1736** in which the Court said:

> "Of course, to the extent that the quality or standard of life will be seriously impaired by excluding the non-EU national, that is likely in practice to infringe the right of residence itself because it will effectively compel the EU citizen to give up residence and travel with the non-EU national. But in such a case the **Zambrano** doctrine would apply and the EU citizen's rights would have to be protected (save for the possibility of a proportionate deprivation of rights)."

3. It is submitted that this gives weight to the "quality or standard of living" which must be considered. Judge Nicholls had said that an adult British citizen who is unable to care for himself will be likely to qualify for assistance from the Government and other local authority but he failed to consider the fact that there is a difference in relation to the level of care that a family member who is a primary carer as opposed to the level of care the social services would provide, such that quality of the living would be affected.

4. It is submitted that the Judge also misunderstood the facts of the case. The Appellant had made enquiries about the level of care that would be available to his father and was told that it would be two care visits of 30 minutes each, one in the morning and one in the evening with three meals a day.

5. It is also submitted that Judge Nicholls erred in his assessment of Article 8 ECHR. He erred in his assessment of the proportionality of removal of the Appellant and in particular failed to consider the nature of the bond between the Appellant and his father and the complete reliance by the Appellant's father on the Appellant. The test is not whether there would be alternative support to meet the requirements of the father's needs. There has to be a balancing exercise and the Judge failed to carry that out.

6. On 12th December 2014 First-tier Tribunal Judge Holmes granted permission to appeal. He noted that Judge Nicholls had accepted that the Appellant was the primary carer for his father, a British citizen, but was not satisfied that his father would be unable to reside in the UK if the Appellant were required to leave. He relied on his entitlement to the care services available in the UK. Judge Holmes went on to say:

> "2. The grounds complain about the Tribunal's approach to the test inherent in the use of the word 'unable' in Reg 15A(4A). It does not appear that the Tribunal was referred by either party to the decision in **Hines [2014] EWCA Civ 660** or gave any consideration to the issue of whether the care available from social services to an adult was comparable to the care available from social services to a child through fostering. Arguably there was therefore inadequate consideration of

whether the finding that the removal of the Appellant would force the Sponsor to be dependent upon social services, should have led to a conclusion that this would effectively compel the Sponsor to leave the UK with the Appellant.

3. Whilst the grounds complain about the approach taken to the Article 8 appeal it is plain from the Determination that the Judge did consider the positions of both the Sponsor and the Appellant. Even if no specific finding was made on whether their relationship amounted to 'family life' or 'private life' it is plain that the Judge had well in mind its nature and strength so no material error could arise from that. Moreover the grounds do not engage with the precarious immigration status of the Appellant, the statutory considerations required by Section 117A/117B or identify any basis upon which the appeal could be allowed on Article 8 grounds as disproportionate to the public interest if it had failed under Reg 15A(4A). Accordingly the grounds complaining about the approach taken to the Article 8 appeal appear to have significantly less merit although they too may be argued."

7. What Reg 15A (4A) 4 says at (c) is –

> 'the relevant British citizen would be unable to reside in the UK or in another EEA state if P were required to leave'.

8. Ms Iqbal sought to rely on **Hines**. She submitted that it applies to this case and the appeal should be allowed on that basis. She relied too on **Harrison**. There is no comparative care available to the Appellant's father and that is the test. With regard to Article 8 I said I would not exclude submissions because it may be arguable that Judge Nicholls placed too much weight on the immigration history of the Appellant and not enough on his relationship with his father and his father's reliance on him. She made submissions saying that the Appellant has had no family of his own because he has been totally committed to looking after his father. He is his father's only carer. She said the Judge's assessment of family life was not reasonable. She said too that there is no requirement for the care required to be on a 24 hour basis and there are cases on this point in the pipeline.

9. I do note that the Judge Nicholls took into account the fact that the Appellant's father would have other support from close family members but that was not the evidence before me. He noted that the Appellant's father has suffered strokes in 2002 and 2014. In January 2010 the Appellant had been granted Discretionary Leave for three months so that he could make alternative arrangements for the day to day care of his father. Judge Nicholls accepted that the Appellant is the primary carer of his father as defined in the EEA Regs. He also appeared to take account of the fact that there was no evidence before him that the situation had been subject to professional assessment. He noted that there was nothing to say that the Appellant needs 24 hour care. He also said at paragraph 20:

> "As his father is required to be a British citizen which he is, it must be recognised that most adult British citizens who are unable to care for themselves will be likely to qualify for assistance from the Government and

> other local authorities which, depending on the individual needs, can include 24 hour residential or nursing care. It is not a matter of preference but of entitlement."

10. He concluded that it had not been established that the Appellant's father needs 24 hour care. He took into account that the Appellant had been a "deliberate overstayer" in the UK for twelve years. He considered the comments of the Court of Appeal in Harrison. He noted that the Appellant's representative had highlighted the concluding remarks about serious impairment of the quality or standard of life but found that there was no evidence beyond the unsupported claim of the Appellant to demonstrate any serious or significant consequences for the Appellant's father if the Appellant had to leave the UK and the father was to move to nursing or residential care.

11. The determination of Judge Nicholls is thorough and comprehensive. He did not consider **Hines** but he gave serious consideration to the points raised in **Harrison** that were relied on by the Appellant's Counsel. The Appellant in **Hines** was a child who was 5 years old at the date of the hearing and the issues were different to those in the case before me. At the heart of the decision was the issue of 'the best interests of the child' which is not the case here. There was no medical evidence before Judge Nicholls that the Appellant's father requires 24 hour care. Ms Iqbal maintained that that is in any event not the test but the fact of the matter is that there is no evidence to support a submission that the Appellant would be unable to live in the UK without his son and no evidence that the level of care he gets would be compromised or his quality of life diminished if his son were to leave the UK. There is a letter from this father's GP dated 24th March 2015 which lists this medical problems and notes he requires a great deal of assistance with personal care and activities of daily living as well as his general mobility. He goes on to say,

> "To the best of my knowledge Mr Tabassam Janjua is the primary full time carer for his father and provides personal care and assistance to his father on a 24 hour basis. It is my opinion that Mr Tabassam Janjua has full knowledge of his father's medical and physical problems elms and is best suited to meet his father's needs as a In all the circumstances and given his findings under the EEA Regs I find that there is no material error of law in his consideration of Article 8 which was also comprehensive and balanced.

12. It seems to me that the crucial failing in the Appellant's case is the lack of satisfactory evidence of his father's needs and the effect the loss of his son's care would have on him. Judge Nicholls was entitled to rely on that. I consider that he was also entitled to take account of the care that would be available from the state in the UK to the Appellant's father as a British citizen.

Notice of Decision

I find that the decision of the First-tier Tribunal does not contain a material error of law and that the decision shall stand.

Signed Date: 20th March 2015

N A Baird
Deputy Upper Tribunal Judge Baird