



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

Appeal Number: IA/23149/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30 June 2015**

**Decision & Reasons Promulgated
On 6 July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**DALJINDER SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Sufian, Counsel instructed by Strand Chambers
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant, Mr Singh, against the decision of First-tier Tribunal (Judge Boyd) (the FtT) who in a decision promulgated on 13 January 2015 dismissed his application against the respondent's decision to refuse to grant him further leave.
2. The appellant is a citizen of India. He applied under the Immigration (EEA) Regulations 2006, Regulation 8, as an extended family member for a residence card to reside in the UK. He claimed that he was a dependent relative of his cousin, a German national exercising Treaty rights in the UK.

3. The FtT found that the appellant was not financially supported by his cousin in India and was not dependent on him in the UK. It found neither the appellant nor his cousin to be credible and that the appellant's account entirely fabricated. The FtT found that the sponsor was self employed and met Regulation 6.
4. In the grounds of application the appellant contended that the FtT erred in law by failing to consider Article 8 ECHR and wrongly stated that it was not relied on. Permission was granted by First-tier Tribunal Judge Andrew on 3 March 2015 on the limited ground that the Tribunal wrongly stated Article 8 was not relied on when in fact it was [32].

Error of law hearing

Submissions

5. I heard from Mr Sufian who submits that the FtT erred by failing to consider Article 8 and that oral evidence was given at the First-tier hearing as to private and family life between the appellant and his EEA national relative's children. Article 8 was relied on in the grounds of appeal. Mr Whitwell opposed the appeal, arguing that absent any removal directions, it was not necessary to consider Article 8. Alternatively, there was no evidence from the appellant to support his claim that at the First-tier hearing there was evidence engaging Article 8 or otherwise, to establish precisely what evidence was given as to family life or indeed private life at the hearing. The FtT decision confirmed that no submissions were made by Counsel on Article 8. Accordingly the matter was not proceeded with at the hearing. Mr Whitwell further submits that any error by failure to consider Article 8 was not material. The facts found by the FtT was that there was no dependency or financial dependency as between the relatives. As such those findings would inform any consideration under the Article 8. The findings made in the decision failed to establish Article 8 was engaged. The error was not material to the outcome of the decision.

Discussion and decision

6. The focus of this error of law hearing is whether or not the FtT erred by failing to consider Article 8 ECHR. The appellant firstly complains that the FtT wrongly stated that Article 8 was not relied on when it was. I am satisfied that this is correct as the Ground of appeal clearly refer to Article 8. The decision is to that extent incorrect. I find that this does not amount to a material error of law. However, the FtT went on to state that Article 8 was not argued in submissions put by the appellant's representative [32]. This suggested that although raised Article 8, it was not pursued. Unfortunately it has not been possible to read the handwriting of the FtT Judge to get further assistance in this matter. There is no criticism as to the FtT's consideration and decision of the substantial issue under appeal with reference to the EEA Regulations and made findings of fact [26 -29]. Relying on those findings of fact I am satisfied that there was no evidential basis on which to establish any Article 8 claim. The FtT found no evidence

of financial dependence as between the appellant and the sponsor. It found no evidence of any dependency above or beyond normal family ties as between adults. There was no evidence of any relationship as between the appellant and the sponsor's children. Although it is argued that oral evidence was given on this issue, no detailed information has been put before me to support this claim, for example there is no extract of the Proceedings or statement from Counsel confirming what oral evidence was adduced before the First-tier Tribunal. I find that there is no reference made in the witness statements relied on to any relationship as between the appellant and his cousin, and/or his cousin's children as is now claimed. It must also be recognised that the FtT found the appellant's claim to be fabricated and that it could not rely on any oral evidence given by him [26]. The FtT found the evidence consistent with a conclusion that the appellant was working and supporting himself.

7. I conclude that the FtT mistakenly stated that Article 8 was not relied on in its decision. I am satisfied that the grounds of appeal did rely on Article 8 in general terms. I observe in passing that no formal application was made under Article 8 and it was not considered in the Reasons for Refusal Letter. Should the FtT go on to assess the appeal under Article 8? Firstly, I am satisfied that Article 8 was not pursued at the hearing, as indicated at [32]. This position is strengthened by the fact that no evidence has been put forward to show what oral evidence was given at the hearing to engage Article 8. Alternatively, there has been no challenge of the findings made by the FtT under the EU Regulations and such findings would be relevant to and inform any consideration of Article 8. I conclude that procedurally or otherwise there was no error of law. There was no unfairness to the appellant as a result of the failure to consider Article 8 and it cannot be argued that the outcome would have been different. I am satisfied that any claim under Article 8 would fail. Accordingly, I find no material error of law in the decision which shall stand and the appeal is dismissed.

Notice of Decision

There no material error of law and the decision shall stand.

The appeal is dismissed.

No anonymity direction is made.

Signed

Date 4.7.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

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

Signed

Date 4.7.2015

Deputy Upper Tribunal Judge G A Black