



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

Appeal Number: OA/06175/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8<sup>th</sup> April 2015**

**Decision & Reasons Promulgated  
On 23<sup>rd</sup> April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR GURJINDER SINGH  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms E Savage, Senior Home Office Presenting Officer  
For the Respondent: Mr A Pretzell, Counsel instructed by ATM Law Solicitors

**DECISION AND REASONS**

- 1.** The Respondent (who I shall refer to as the claimant) is a national of Kenya whose appeal was allowed on human rights grounds by First-tier Tribunal Judge Higgins in a decision promulgated on 10<sup>th</sup> December 2014.
- 2.** Grounds of application were lodged. It was said by the Secretary of State that it was made clear in **Gulshan [2013] UKUT 00640 (IAC)** that an

Article 8 assessment can only be carried out when there were compelling circumstances not recognised under the Rules. The Tribunal had failed to identify why the claimant's circumstances were so compelling – reference was made to **Nagre [2013] EWHC 720 (Admin)**.

3. Specifically there was no evidence that the family had been unable to cope without the claimant whilst he was in India. While his wife and one of his children may have medical problems there was no evidence that the family here could not help support him in his absence. There was no evidence that the best interests of his youngest child would be affected. He was able to make contact with them via modern methods of communication and could continue to do so.
4. Furthermore he was a persistent offender and was not fully rehabilitated and might re-offend once more and cause harm to the public.
5. Permission to appeal was granted on the basis that an arguable error of law arose in the context of the proportionality exercise.
6. Before me Ms Savage for the Secretary of State relied on the grounds. The judge had not carried out a proper analysis in the balancing exercise. He had a duty to provide adequate reasons for his decision and had failed to do so.
7. For the claimant Mr Pretzell relied on his skeleton argument. The judge had found that his wife would have considerable difficulty in looking after her youngest daughter due to her Parkinson's and other medical conditions. The judge had carefully considered the claimant's daughters' positions at paragraph 16 to 18 of the decision. He considered Section 55 of the 2009 Act noting it was plainly in the interests of the claimant's youngest daughter that she live in the same household as the claimant.
8. The judge had made a clear finding that it would have been unduly harsh to have expected either his wife or his children to relocate to India. The proposition that modern means of communication were capable of replacing the quality of genuine family life had been repeatedly criticised – see the skeleton argument.
9. Specifically the judge recorded that the Entry Clearance Officer had not satisfied him that the claimant's history of offending was such as to render his exclusion conducive to the public good (paragraph 24). So far as rehabilitation was concerned it appeared to the judge to have been "successful" (again paragraph 24). In the final sentence of that paragraph he had correctly found that bearing in mind the claimant had not committed a crime for some six years by the time he went to India in April 2013 the conclusion that his exclusion was conducive to the public good was not sustainable.

- 10.** The points made by the Secretary of State amounted no more than a disagreement with the fact finding carried out by the judge. There was no error in law.
- 11.** I reserved my decision.

### **Conclusions**

- 12.** As the judge noted Mr Singh is a claimant who left the UK for the first time in 31 years on 3<sup>rd</sup> April 2013. While he did have a number of convictions for indecent assault the judge noted that when he flew to India in April 2013 he had not been convicted of any criminal offence in the previous six years (paragraph 12). It is important to note that in paragraph 24 the judge found, for reasons given, that the rehabilitation of the Appellant appeared to have been successful. That finding seems to me to be one that was clearly open to the Judge on the evidence presented to him.
- 13.** The judge noted the position of the family. His wife has Parkinson's disease. It was clear to the judge she was in need of care and would have considerable difficulty in caring for the youngest child (paragraph 15).
- 14.** In terms of paragraph 16 to 18 the judge noted the position of the claimant's children and in particular (paragraph 17) that the Appellant's second eldest daughter was badly affected by the fear that her father might not return and that the third eldest daughter was very seriously ill (paragraph 18).
- 15.** Given those unchallengeable facts the judge went on to carry out the balancing exercise under Article 8. Specifically he took account of, as he was obliged to do, Section 117B of the Nationality, Immigration and Asylum Act 2002. He took account of the best interests of the children. He specifically noted that maintenance of effective immigration control was in the public interest (paragraph 30). He took into account the fact of the need to deter others from making false representations (paragraph 30).
- 16.** Weighing up all the facts the Judge said that the balance of proportionality in this case came down on the side of upholding the claimant's rights under Article 8 and he therefore allowed the appeal on human rights grounds.
- 17.** While the judge did not say there were compelling circumstances it seems to me that this is implicit in his reasoning. He set out the vulnerability of the family and the fact that the claimant had been here for some 31 years. Carrying out the balancing exercise he correctly took account of the fact that the maintenance of effective immigration controls was in the public interest. That had to be balanced against the fact that the claimant had established a genuine and subsisting relationship with his wife and children when he was here lawfully.

**18.** In the particular circumstances of this case the claimant presented a powerful factual matrix that he should succeed in respect of his fundamental, if qualified rights under Article 8 ECHR. The judge explained why he considered this to be so. It follows that there is no error of law in the decision which must stand. There does not appear to me to be any need for an Anonymity order and I was not asked to make one.

**Notice of Decision**

**19.** The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

**20.** I do not set aside the decision.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald