



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

Appeal Number: IA/08361/2015

THE IMMIGRATION ACTS

**Heard at Field House
On: 27 May 2016**

**Decision & Reasons Promulgated
On: 7 June 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

**MR MAHATEMSINGH DHUNOO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Martin, counsel instructed by Raj Law Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision, promulgated on 9 October 2015, of First-tier Tribunal Judge Devittie (hereinafter referred to as the judge).

Background

2. The appellant entered the United Kingdom as a visitor on 5 September 2000. An in-time application made for leave to remain as a student was refused on 9 February 2001 with no right of appeal. On

7 June 2002, the appellant sought reconsideration of the aforementioned decision. On 5 June 2006, the appellant was encountered working and was briefly detained. On 6 August 2014, his previous application was reconsidered and refusal was maintained. Thereafter the appellant sought a further reconsideration and an application to remain in the United Kingdom on compassionate grounds which was refused with no right of appeal. The Secretary of State agreed to reconsider the matter upon the appellant submitting a pre-action protocol letter.

3. On 12 February 2015, a decision was made to remove the appellant. A refusal letter of the same date noted, in summary, that the appellant made no claim to have a partner or child in the United Kingdom; that he had lived in the United Kingdom for less than 20 years and that it was not accepted that there would be very significant obstacles to his integration if he was required to return to Mauritius. The appellant's claim to play a significant role in caring for his aunt and uncle (with whom he did not reside) was not considered to amount to exceptional circumstances.
4. On 22 July 2015, Raj Law Solicitors sent the respondent a statement of additional grounds which asserted that the appellant was an extended family member of a national of the European Economic Area, in that he was dependent upon his above-mentioned uncle and aunt who are both French nationals.
5. At the hearing before the judge, the appellant and his aunt gave evidence. The judge noted that it was not contested that the appellant did not meet the requirements of the Immigration Rules and proceeded to consider the Article 8 claim outside the Rules, based on the judge's acceptance that the appellant played an important role in caring for his aunt and uncle. Ultimately, the judge decided that the consequences of the appellant's removal were not sufficiently serious to outweigh the public interest in the maintenance of effective immigration control.
6. In the grounds seeking permission, it was argued that the judge failed to consider the statement of additional grounds and supporting material which was said to have been enclosed in the appellant's bundle of evidence submitted for the appeal before him and therefore only considered the Article 8 claim.
7. First-tier Tribunal Judge PJM Hollingworth granted permission, finding that it was arguable that an error of law had arisen for the reasons given in the grounds.
8. The respondent's Rule 24 response noted that there is no reference to the appellant's claim to be an extended family member of an EEA national in the decision and reasons. It was said not to be clear if this issue was pursued at the hearing.

9. Reference was also made in the Rule 24 response to the appellant's subsequent application under the Regulations made on 22 October 2015. This was refused on 26 April 2016 and it was said to be open to the appellant to appeal that decision instead.

The hearing

10. At the hearing before me, Mr Martin argued that the judge had limited his consideration of the appellant's case, to Article 8 outside the Rules. The statement of additional grounds was before the judge, enclosed in the appellant's bundle and which referred in detail to the appellant's claim under Regulation 8. There was no question but that this bundle was before the judge, because he had referred to other documents contained therein.
11. Mr Martin drew my attention to the respondent's decision in relation to the appellant's recent unsuccessful application for a residence card. In brief, his application been refused for want of a valid identity document (which was with the respondent in relation to the matter before me) and he had been accorded no right of appeal.
12. Mr Walker conceded that it was "*clear*" that the appellant's Regulation 8 claim was before the judge; it should have been taken into account and he invited me to remit the matter to the First-tier Tribunal for a de novo hearing.

Decision on error of law

13. The appellant's documents which were before the judge included a statement of additional grounds which was served on the respondent on in July 2015. That document made it abundantly clear that the appellant was claiming to be an extended family member, in that he claimed to be dependent on or living in the same household as relatives who were French nationals. That aspect of his claim went entirely unaddressed by the judge.
14. In these circumstances I am satisfied that there are errors of law such that the decision be set aside to be remade.
15. The appellant's Article 8 claim and Regulation 8 claim involve consideration of similar evidence therefore, for the sake of simplicity, none of the judge's findings are preserved.
16. I considered listing this matter to be heard in the Upper Tribunal, in view of practice statement 7 of the Senior President's Practice Statements of 10 February 2010 (as amended), however the appellant has yet to have any consideration of his Regulation 8 claim at the First-tier Tribunal and it would be unfair to deprive him of such consideration.
17. No anonymity direction was made by the FTTJ and I can see no reason

for doing so now.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision to be re-made.

Directions

- This appeal is remitted to be heard *de novo* by any First-tier Tribunal Judge except Judge Devittie.
- The appeal should be listed for a hearing at Taylor House.
- Time estimate is 2 hours.

Signed:

Date: 5 June 2016

Deputy Upper Tribunal Judge Kamara