



ST
Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/02490/2014

THE IMMIGRATION ACTS

Heard at Field House
On 8 March 2016

Decision & Reasons Promulgated
On 5 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

ENTRY CLEARANCE OFFICER

Appellant

and

**B G
(ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Respondent: Mr Jesurum, counsel
For the Appellant: Ms Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is a material error of law in the determination of First-tier Tribunal Judge S D Rodger (“the FTTJ”) promulgated on 11 March 2015, in which the FTTJ allowed the appeal of the respondent (hereinafter called “the claimant”) on human rights grounds.

Background

2. The claimant is a citizen of Nepal. He appealed against the decision of the Entry Clearance Officer (ECO) to refuse him entry clearance to settle in the UK as the dependent son of his

father, an ex-Gurkha soldier, who has settled here.

3. It was accepted, before the FTTJ, that the claimant did not fulfil the criteria in the Immigration Rules for entry clearance. The claimant pursued his appeal on human rights grounds on the basis that the decision placed the UK in breach of Article 8 of the European Convention on Human Rights. The appeal was allowed: the FTTJ found that Article 8 was engaged because there was a “high emotional bond” between the claimant and his father and that they were a close-knit family. He accepted the submission for the claimant that the claimant’s circumstances were compelling and exceptional because of his particular circumstances as a Gurkha dependent. The grounds of appeal assert that the FTTJ arguably failed to provide adequate reasons to establish the engagement of Article 8.
4. Permission to appeal was granted in the following terms:
 - “2. The grounds of appeal complain that the Judge failed to give adequate reasons for finding that Article 8 was engaged as between the Appellant and the sponsor.
 3. An arguable error of law is disclosed by the application.”
5. Thus the matter comes before me.

Submissions on Error of Law

6. I noted at the outset of the hearing that the ECO did not challenge the finding of the FTTJ that the circumstances of the claimant were such as to merit consideration outside the Immigration Rules and in accordance with the Article 8 jurisprudence. Ms Willocks-Briscoe confirmed that to be the case. She submitted that the sole issue is the reasoning for the engagement of Article 8; there was no challenge to the assessment of proportionality. She accepted that the threshold for engagement was a low one. However, she submitted that the FTTJ should have taken into account cultural issues when considering whether the emotional and financial ties “went over the limit”. This was not a case of dependency over and above the norm. She accepted that there was a degree of attachment. The decision could also be criticised because the FTTJ had not looked at the situation when both the sponsor and claimant were living together in Nepal.
7. Mr Jesurum, for the claimant, submitted that, at its heart, this was a reasons challenge by the ECO. There was no challenge to the findings of fact. The decision referred to the sponsor and claimant being close emotionally. The FTTJ had resolved conflicts identified by the ECO’s Presenting Officer and had rejected those challenges. If cultural matters were to be taken into account, this would assist the claimant.

Discussion

8. The threshold for engagement of Article 8 is a low one. The FTTJ found the sponsor to be a wholly credible and reliable witness and accepted his evidence of a close relationship with the claimant and the existence of emotional ties over and above the norm for a father and his adult son. The FTTJ has taken into account the cultural background of the claimant and his father (paragraphs 24, 25 and 30). The decision is comprehensive and well-reasoned. There is no challenge to the findings of fact and the finding that Article 8 is engaged is soundly based on those facts. There is no challenge to the assessment of proportionality. The ECO merely disagrees with the outcome.

9. For these reasons, the decision of the First-tier Tribunal does not contain an error of law. The FTTJ's decision stands.

Decision

10. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
11. The decision is not set aside.
12. Whilst no anonymity direction was made in the First-tier Tribunal, given my references to the claimant's personal circumstances, an anonymity order is appropriate now.

A M Black

Deputy Upper Tribunal Judge

Dated: 18 March 2016

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the respondent is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

A M Black

Deputy Upper Tribunal Judge

Dated: 18 March 2016