



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04999/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 8th August 2018

Determination & Reasons Promulgated
On 12th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

OMARA JARRA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs C Johnrose (Solicitor), RBC Consultancy
For the Respondent: Mr A McVeety, (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge M Davies, promulgated on 11th May 2018, following a hearing at Manchester on 26th April 2018. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Gambia, and was born on 14th October 1991. He appealed against the decision of the Respondent Secretary of State dated 1st February

2018, refusing his application for leave to remain in the UK on the basis that he had been in the UK for over twelve years, had resided in this country for at least half his life, and had built up at least ten years of continuous leave to remain at the date of the application. The Appellant claimed also to have close ties with his mother, who gives him financial assistance, as well as close ties with his younger siblings. He claimed to have no more ties to Gambia following the death of his maternal grandmother there, although his father lives there, but with him he does not have any subsisting relationship. The Respondent refused the application, however, on the basis that he was 24 years and 11 months old, and had not lived more than half his life in the UK. He did not live with his mother and his siblings. In any event, these relationships could be maintained from Gambia by using modern means of communication. It was also open to them to visit him.

Background to the Appellant's Claim

3. The background to the Appellant's claim is that he entered the UK on 1st June 2004 as an EEA family member of a qualified person. He was then age 12 years and 8 months. He was issued with a twelve month residence card. The Appellant continued then to reside in the UK. He returned to Gambia only once. This was for a short period in order to attend his grandmother's funeral in December 2015. He resided with his father in this country until 2014. In May 2011 he was issued with a five year EEA residence permit as a family member of his father. This was valid until May 2016. The Appellant then lost contact with his father in April 2015. On 5th October 2016 the Appellant applied for leave to remain on the basis of his private and family life under the 10-year route to settlement, and it was his claim that he had resided at that time for twelve years and four months, such as to be eligible to succeed under paragraph 276ADE.

The Judge's Findings

4. The determination of this experienced judge is well-structured. It is divided up into sections of the Respondent's case, the Appellant's case, the evidence as elicited by the Appellant's representative and the Respondent in cross-examination, and this was then followed by the submissions from the respective parties. There is a section at the end headed "My Findings" where the judge explains why the appeal stands to be allowed. In short, what the judge deems to be a matter of "considerable significance in this appeal" is the fact that the refusal letter of 1st February 2018, when dealing with an application based upon Article 8 grounds, shows the Respondent Secretary of State making a decision with "little or no regard to the extensive submissions made by the Appellant's representatives in the letter of 30th September 2016".
5. The judge explains that the Appellant's representatives had in that letter gone to "considerable trouble to set out the Appellant's circumstances since his arrival in the United Kingdom". It goes on to say that they had provided "extensive documentary evidence including letters of support from the Appellant's stepmother and brother". There was also evidence of "considerable detail" in "the history of the Appellant's stay in the United Kingdom".

6. Yet, despite a decision by the Respondent Secretary of State which was not made before some, one and a half years after the application, the reasons given for the refusal are given in “an exceptionally brief decision letter”. The judge explains that “there is no indication whatsoever that the Respondent had given proper consideration either to the submissions made by the Appellant’s representatives in their letter of 30th September 2016 or in relation to the documents submitted with that letter” (paragraph 38).
7. Finally, the judge also noted that the Home Office had failed heed its own guidance in relation to applications made by “family of people settled or coming to settle in the United Kingdom” (paragraph 39).
8. Thereafter, the judge went on to deal with the question of exceptional circumstances (paragraph 40), and the judge observed that it was the case that “because of the absence of his father he has a family life with his siblings in the United Kingdom who at the date of the application are dependent upon him” (paragraph 41). He goes on to conclude that the removal of the Appellant in these circumstances sought to violate his Article 8 rights and, “his siblings will be deprived of his presence and in all probability it may be impossible and impractical for them to visit him in Gambia” (paragraph 42).
9. The appeal was allowed.

Grounds of Application

10. The grounds of application state that the Appellant had only been able to demonstrate that he was issued with an EEA family permit between the date of his arrival and 29th April 2005, and subsequently issued a residence card between 16th February 2011 and 19th May 2016. The issue of a residence card only demonstrates that at the date of the application the person has shown that they are a family member of an EEA national. It did not confirm the fact that throughout the period the person was in fact residing in the UK in accordance with the EEA Regulations. It was for the judge to give reasons to establish what the evidence demonstrated, namely, that the Appellant would have been granted a residence card in accordance with the Regulations to establish his presence in the UK (see paragraph 45). It was incumbent upon the judge to identify the evidence.
11. Second, the judge had found that the Appellant had demonstrated that he had family life with his siblings (at paragraph 41) of the determination. However, other than stating that the judge accepted the evidence of dependency, the judge had made no findings regarding what evidence supported this decision and his reasons for accepting the Appellant’s evidence. This was important because at the hearing, the Appellant had no supporting witnesses from his family members to corroborate his claim as to the nature of his involvement with his siblings. The judge had simply not engaged with any of the evidence. This too was important because dependency beyond normal emotional ties alone suffices.
12. Third, the judge had stated that the Respondent failed to consider guidance in refusing the Appellant’s claim (see paragraphs 38, 39, and 40). However, the judge did not

identify what part of the guidance was being considered. This was important because almost the entirety of the Appellant's circumstances were captured under the Rules. The refusal letter did consider the position under freestanding Article 8 jurisprudence (see paragraph 40 of the determination).

13. Fourth, the judge found that the Appellant would not be able to return to the Gambia because he had no family there. However, his father resided there (see paragraph 34 of the determination). There was no reason, moreover, why the Appellant could not re-establish contact with his father upon return. After all, his father had informed the Appellant of the death of his grandmother, which led to the Appellant returning back to the Gambia on one occasion to attend her funeral.
14. In reply, Mrs Johnrose submitted that it was simply not true that the judge had not referred to the evidence. He made it quite clear that the Appellant's case was set out in his Notice and Grounds of Appeal. He then made it quite clear that, "I've taken into account the evidence submitted by the Appellant's representatives with their letter of 20th April 2018. I have taken into account the Appellant's witness statement which she adopted at the hearing and his oral evidence. I have taken into account the skeleton argument submitted by the Appellant's representative ..." (paragraph 12). The judge then went on to say how the Appellant had "adopted his evidence in the witness statement" (paragraph 14). As to the EU dimension of the claim, and, whether the Appellant has been residing in the UK in accordance with EEA Regulations, the judge again referred to this evidence. He observed how, "when the Appellant came to the United Kingdom in 2004 his father was working. He worked until 2006 and then worked between 2007 and 2014. His father made his application for a residence card and provided evidence that he was working" (paragraph 15). All of this was the evidence provided on behalf of the Appellant.
15. The question is whether the decisionmaker here made it clear what evidence he had accepted and what he had rejected. This was abundantly plain, submitted Mrs Johnrose from the paragraph under "My Findings" where the judge had explained that he had "received credible evidence from the Appellant supported by extensive documentary evidence". The judge was clear that he would "accept that because of the absence of his father he has a family life with his siblings in the United Kingdom who at the date of the application are dependent upon him" (paragraph 41). That is a finding that the judge had to make, and the judge did so on the basis of the evidence that had been provided, to which he had explicitly referred. As to the "guidance", the judge had expressly referred to this (at paragraph 39) and there could be no doubt as to what it was that he was referring to. It was not the case that there was no guidance as such.

No Error of Law

16. I am satisfied that the making of the decision by the judge did not involve the making of an error of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. It is well-established that,

"It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail raised in a case. This leads to judgments becoming overly

long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost” (see per Haddon-Cave J in **Budhathoki (reasons for decision) [2014] UKUT 341**).

17. Although the judge may well have given more detailed and extensive reasons as to why he accepts the evidence on behalf of the Appellant, there can be no doubt to the party who has lost in this appeal, namely, the Secretary of State, why precisely it is the case that this appeal has been lost by one side and won by the other.
18. The starting point is the well compiled representations by RBC Immigration Consultancy of 30th September 2016 (which appear in the Home Office bundle at C1). They are meticulous in their detail and extensive in setting up the background to the Appellant’s claim, all six pages. It is perfectly clear from the judge’s decision that the refusal letter, given nearly one and a half years after the application was made, in what the judge referred to as “an exceptionally brief decision letter” (paragraph 38) fails to give proper reasons as to why these representations are rejected. On the other hand, it is equally clear that the judge does accept the entire import of this evidence, coming as it does, against the background of the evidence in relation to the Appellant’s history, whereby he had been in this country, nearly twelve years, having arrived also at the age of 12, and the judge clearly did not reject the evidence that when he came in 2004 his father was working, and that his father made his application for a residence card and provided evidence that he was working. There is nothing in the body of paragraph 38, where the judge, in a finding that is critical of the Respondent Secretary of State, makes it clear that the Appellant’s side had

“supported the submissions by providing extensive documentary evidence including letters of support from the Appellant’s stepmother and brother. They set out in considerable detail the history of the Appellant’s stay in the United Kingdom” (paragraph 38).

19. In **Shihzad [2013] UKUT 85** it was made clear that, “although there is a legal duty to give a brief explanation of the conclusions on the central issue in which an appeal is determined, these reasons need not be extensive if the decision as a whole makes sense”. This is precisely the position here. Insofar as there may be any error in the judge not precisely pinpointing the exact nature of the evidence that he was basing his decision upon, it is not capable of affecting the outcome of the appeal.
20. Consequently I do not set it aside. The grounds of application (for example ground 2) states that the judge did not make any findings, he did not determine what evidence supported his decision, and that “this is considered significant as the evidence before the Tribunal was that the Appellant had no supporting witnesses from his purported family members to corroborate his claims as to the nature of involvement with his siblings”. However, it is plain that the judge does accept the evidence, notwithstanding the fact that there are no supporting witnesses, because the documentary evidence is so compellingly strong. Similarly, insofar as it is stated (ground 3) that, “whilst the decision may well have been concise of the issue of matters

outside of the Rules, it is noted that almost the entirety of the Appellant's circumstances were captured under the Rules". However, the judge, for good measure, refers to the Secretary of State's own policy, where under the heading "compassionate factors" (see A5 of the Appellant's bundle), there is reference to "unjustifiably harsh consequences for the applicant or their family" which may be occasioned, the judge was clear that the Secretary of State "has not followed his own guidance and taken into account compassionate circumstances that were clearly put before him.

21. That is the case because he has made no reference whatsoever to the extensive submissions made by the Appellant's representatives in their letter of 13th September 2016 and appears to have not considered the documentation that was submitted by the Appellant in support of his application" (paragraph 46). That was a conclusion that was open to the judge.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

The appeal by the Secretary of State is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

8th August 2018