



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

Appeal Number: PA/05601/2017

THE IMMIGRATION ACTS

Heard at Field House

On 9 January 2018

**Decision & Reasons
Promulgated
On 18 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

[M M]

(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Syed-Ali, Counsel

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In this case it is the appellant who has appealed against the decision of the First-tier Tribunal dismissing his appeal on protection and human rights grounds. The appellant, an illegal entrant, claimed asylum some nine years after his arrival in the UK on the basis he was gay. Judge of the First-tier Tribunal Aziz found the appellant was not credible and dismissed the appeal.
2. Whilst the grounds seeking permission to appeal made a number of challenges to the Judge's treatment of the protection claim,

permission to appeal was granted on a single, narrow ground: the Judge had failed to determine the appellant's article 8 claim.

3. The respondent has filed a rule 24 response opposing the appeal on the basis it was not clear that article 8 was relied on at the hearing and, in any event, the ground had not been particularised.
4. I note that the grounds of appeal to the First-tier Tribunal did raise article 8 and, in particular, it was claimed that the appellant met the requirements of paragraph 276ADE(1) of the Immigration Rules, HC395, on private life grounds and that he enjoyed family life with Ms [MM], his "adoptive mother".
5. It is also clear the Judge did not address human rights beyond the protection claim. There is nothing I can see in either the decision or the record of proceedings to show that article 8 was abandoned as a discrete ground of appeal outside the protection claim.
6. I heard submissions from the representatives as to whether the First-tier Tribunal Judge made an error of law in his decision. In brief, Mr Syed-Ali relied on the grounds seeking permission to appeal and his own "grounds of appeal". Rightly, he did not seek to reopen the matter of the Judge's assessment of the protection claim. Ms Isherwood sought to defend the decision because it was not clear how article 8 was to be argued.
7. I indicated my view that the decision of Judge Aziz, whilst sound as far as it goes, is erroneous to the extent he has failed to determine one of the grounds of appeal before him. His decision is formally set aside although all his findings in relation to the protection claim are preserved.
8. This would be a suitable case to remit to the same Judge to complete his decision. However, Judge Aziz has recently transferred his main hearing centre away from Hatton Cross so this was not convenient in this case. I therefore indicated that I should remake the decision myself in the Upper Tribunal. Mr Syed-Ali accepted that standard directions had been issued in this case alerting the appellant's solicitors to the likelihood that the remaking of the decision would take place at the same hearing. Indeed, a supplementary bundle has been filed by them, attached to which is another copy of the bundle previously filed in the First-tier Tribunal. It was plain to me that it had been anticipated that the decision could be remade by the Upper Tribunal at the same hearing. The representatives did not oppose my indication that I could remake the decision.
9. The appellant was called but said he could not understand English and he needed an interpreter. An interpreter had not been booked. I discussed the position with Mr Syed-Ali and it was agreed that the hearing could proceed by way of submissions. I took Ms Isherwood to

agree that the appellant's witness statement could stand as his evidence and she did not need to cross-examine him. The witnesses who supported the appellant's protection appeal and whom Judge Aziz found not credible, Mr [AP] and Mr [AR], were not relied on. There is a statement in the appellant's bundle made by Ms [MM] which was relied on by Mr Syed-Ali. She did not attend the hearing in the First-tier Tribunal and she was not present at the hearing before me either. Mr Syed-Ali took instructions and told me she was housebound. There was no application for an adjournment so that she could give oral evidence.

10. Having carefully considered the documents filed and the submissions made, I have made the following findings of fact, applying the civil standard of proof.
11. I have kept in mind Judge Aziz's finding that the appellant had manufactured a claim to be gay and that his asylum application was contrived after he had been caught working illegally. As said, Judge Aziz's findings are not the subject of challenge.
12. The appellant's immigration history is set out in Judge Aziz's decision and is not disputed save for the date of the appellant's first entry to the UK. He has claimed he arrived in the UK in 2001 as a minor. The respondent accepts he had entered by 2004, although the GP's letter submitted in the appellant's bundle states he has been known to the practice since September 2003, at which time he would have been 18. In her statement, Ms [MM] states she met the appellant in 2001, when he was "about 16", and that she immediately gave him a home. However, as said, Ms [MM] has not come forward to give oral evidence and there is a conflict between the appellant's claim to have lived with Ms [MM] in East London and the GP's letter which gives an address in Norwich, local to the practice. I also note Judge Aziz recorded that the appellant was fingerprinted in France in June 2003. I find it is more probable than not that the appellant entered the UK no earlier than late 2003, aged 18. I do not believe his account of being taken in by Ms [MM].
13. It is uncontested that the appellant has never had leave to enter or remain. He made an unsuccessful application for ILR in 2007 and he did not exercise his right of appeal against the refusal decision, which was taken in 2009. An article 8 application was made in September 2013 and was also refused. The appellant has been encountered working illegally on three occasions. He has failed to report and been treated as an absconder on three occasions.
14. The appellant has not claimed to have a partner or children. His claim to have had same-sex partners has been rejected. I proceed on the basis the appellant is single. He is now 33 years of age.

15. The GP's letter shows that, as at June 2017, the appellant was receiving anti-depressant treatment. He was due to have a follow-up appointment in July but I have no further information about that.
16. Mr Syed-Ali argued the appellant's case based on his "family life" with Ms [MM]. The appellant has stated he regards her as his adoptive mother and she makes similar claims in her statement. However, the closeness of the relationship has not been established with satisfactory evidence. As said, I reject the claim she took the appellant in when she found him crying in Mile End Road, having been abandoned by child-traffickers. It is wholly unexplained why the appellant would have registered and been seen over the ensuing years at a GP's practice in Norwich if he was living as part of Ms [MM]'s household in East London.
17. The appellant is now a mature man. Ms [MM]'s statement includes the claim that the appellant has always been financially and emotionally dependent on her and her family but this appears unlikely given the known facts that the appellant has been encountered working on no less than three occasions and he most likely lives in the Norwich area. The GP's letter makes no mention at all of Ms [MM] or any supportive family or friends and states only that he attends the surgery with a friend who comes to interpret. At the time the appellant was unemployed. I find that Ms [MM] may well be a family friend of the appellant but I do not accept she has taken the place of his mother or that the appellant is financially dependent on her or her family.
18. In the course of making his claim to international protection, the appellant claimed to have come from Mokrompur in Bangladesh and that his family were "impoverished". Having rejected his account of being trafficked, it is more likely he financed his own trip to the UK so it may be an exaggeration to describe his family as impoverished. It is clear he has a number of siblings in Bangladesh.
19. I approach my evaluation of article 8 by reference to the five questions to be asked as set out in paragraph 17 of *Razgar* [2004] UKHL 27, an approach confirmed in paragraph 7 of *EB (Kosovo)* [2008] UKHL 41.
20. The question of whether family life exists between adult family members was considered in detail in the case of *Ghising (family life - adults - Gurkha policy)* [2012] UKUT 00160 (IAC) in paragraphs 50 to 62. The guidance given by the Upper Tribunal in that case was approved by the Court of Appeal in paragraph 46 of *Gurung & Others* [2013] EWCA Civ 8. Most of the case law has been concerned with adult children living with their parents. The thrust of the guidance is that each case depends on its own facts. The most recent of these decisions was *AA v United Kingdom (Application No.8000/08)*, a decision of the European Court of Human Rights, where it was said at paragraph 49 that:

“An examination of the court’s case law would tend to suggest that the applicant, a young adult of 24 years old, who resides with his mother and has not yet founded a family of his own, can be regarded as having ‘family life’.”

21. As was said in *Ghising* at paragraph 61, AA appears to support the proposition that one of the factors which could be taken into account in relation to the issue of “family life,” was whether or not the adult child is still living with the parents upon whom he is alleged to be dependent. If so, that would be a positive factor to be taken into account in his favour.
22. In *Pun & Ors (Gurkhas – policy – article 8) Nepal* [2011] UKUT 00377 (IAC) the Upper Tribunal recorded counsel’s submission that the test was whether there was “real, effective and committed support”, which could be demonstrated by a strong family bond and financial support. The Tribunal accepted that, where this is shown, it is a factor of some weight (paragraph 23). The wording appears to come from the consideration of Strasbourg authorities by Sedley LJ in *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31. It is now recognised that the test has been interpreted too narrowly in the past. There is certainly no artificial cut-off point when a person reaches majority and the test is highly fact-sensitive.
23. In *Rai v ECO*, the Court held that the Upper Tribunal in that case had failed to focus on the “practical and financial realities” entailed in the decision by the appellant’s parents to leave Nepal and settle in the UK. The question was whether the appellant’s family life with his parents subsisted then and was still subsisting at the date of the decision. Those are questions of fact for the tribunal. Beatson LJ concluded:

“61. ... the judge below appeared to apply a test of “exceptionality” in order to determine whether family life exists between the appellant and his parents. This is contrary to the approach in the Ghising cases approved in this court in Gurung’s case and what was expressly stated by this court in Singh v Secretary of State for the Home Department [2015] EWCA Civ 630. In Singh’s case, Sir Stanley Burnton (with whom Richards and Christopher Clarke LJ agreed) stated at [24] that there is no requirement of “exceptionality”, that all depends on the facts, and that there must be something more than the love and affection between an adult and his parents or siblings which will not in itself justify a finding of family life”.
24. I consider the facts do not come close to supporting a finding that the appellant enjoys family life in the UK with Ms [MM] or anyone else. I am not satisfied there is any degree of real emotional or financial dependency between them. The reality is the appellant came to the UK as a young adult, presumably for economic reasons. He will no doubt have received assistance and support in one form or another from friends, which he values. The claim that Ms [MM] is the

appellant's adoptive mother is not made out in fact and appears to have been contrived. The appellant's friendships, including with Ms [MM] may form important strands of his private life but he has not shown he enjoys family life.

25. It is clear the appellant will have established some form of private life through his employment and social relationships. The exact nature of those ties are obscure. To that extent, article 8 may be engaged.
26. However, I see no reason the appellant could not successfully re-establish his private life in Bangladesh. He does not meet any of the requirements of the rules under paragraph 276ADE(1), as acknowledged by Ms Syed-Ali. He has a family to return to, he speaks the language of Bangladesh, he is Muslim and he is in reasonably good health. There is no reason at all he could not reintegrate.
27. The appellant has resided in the UK for around 14 years and three months. However, little weight can be given to his private life ties, which have been entirely developed at a time that he was without leave, in accordance with section 117B of the 2002 Act. Despite his lengthy residence, the appellant told me he has not yet managed to learn English. This is another feature of his case which would weigh against him because it is in the public interest that he should do so in order to avoid becoming a burden on the State.
28. The public interest would clearly prevail over the appellant's interests as an economic migrant. The article 8 claim is very weak and the decision is proportionate.
29. The appeal is dismissed on article 8 grounds.

NOTICE OF DECISION

The Judge of the First-tier Tribunal made a material error of law and his decision is set aside.

The following decision is substituted:

The appeal is dismissed on protection and human rights grounds, including article 8.

No anonymity direction is made.

Signed

Date 9 January 2018

Deputy Upper Tribunal Judge Froom