



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal No: HU/03782/2019**

THE IMMIGRATION ACTS

Heard at North Shields

On 13 September 2019

**Decision & Reasons
Promulgated**

On 5 November 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**F. T.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Australia. He entered the UK lawfully on 15 February 2018 on a visit visa with his parents.
2. On 1 August 2018 the Appellant made an application for leave to remain outside the Immigration Rules. This was

refused on 12 February 2019. The Appellant's Article 8 appeal against that decision was heard on 14 June 2019 by First-tier Tribunal Judge Fisher, and dismissed, in a decision promulgated on 26 June 2019.

3. The Appellant was granted permission to appeal by decision of 9 August 2019 of Judge Neville on the basis it was arguable the approach of the First-tier Tribunal ["FtT"] to both the question of whether Article 8(1) was engaged, and, the assessment of the proportionality of the decision was flawed.
4. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

The background

5. The Appellant accepts that he had not seen his mother for 14 years, and indeed told the FtT that he had wholly lost contact with her, following the divorce of his parents when he was a young child. Upon her re-marriage his mother had come to live in the UK with the Appellant's step father. She had since naturalised as a British citizen, although she would also appear to have retained her citizenship of Pakistan.
6. By 2010 the Appellant was living in Australia, where he had naturalised as an Australian citizen. He did not suggest that he had lost his citizenship of Pakistan.
7. The Appellant told the FtT that it was only as an adult that he was able to establish contact with his mother. Having done so he resolved to visit her in the UK. He accepts that he had originally intended to apply for a working holiday maker visa, so that he could take employment in the UK and stay for two years. Instead he decided to apply for a six month visit visa. He told the FtT that he decided to do so when his mother told him that she proposed to commit suicide, and he did not feel able to wait whilst a working holidaymaker visa was processed.
8. Upon arrival in the UK the Appellant took up residence in the matrimonial home shared by his mother and step-father. He has been supported financially by his step-father ever since.
9. Although the Appellant and his mother gave evidence to the FtT, the Appellant's step-father did not.
10. The FtT was told that the Appellant's step-father wanted both the Appellant and his wife to vacate the matrimonial home upon the conclusion of the appeal proceeding. The Appellant claimed that their marriage was at an end, although he accepted that his step-father

continued to support him, and, that no step had been taken to begin the process of terminating their marriage.

11. The FtT was told that the Appellant's mother was too ill to work, but also inconsistently, that she worked in his step-father's shop from time to time. It was claimed that she had not worked since the week after the receipt of the decision to refuse the Appellant's application, although it was accepted that she was still capable of working on at least a casual basis.
12. The FtT was told that the Appellant proposed to remain in the UK permanently and to care for his mother here. The Appellant had no intention of taking his mother to Pakistan, and said that he was unable to take her to Australia because he was not in a financial position to sponsor an application for entry clearance by her to Australia.

Error of Law in relation to Article 8(1)?

13. It is plain that even on his own case the Appellant did not enjoy "family life" with his mother whilst he lived in Australia. He was an adult, who was living alone, having established his own household. He had not seen his mother for some 14 years.
14. It is also plain that at the date of the hearing both the Appellant and his mother were financially dependent upon her husband; his step-father. However the Judge accepted the claim that the Appellant's step-father had set a deadline upon their continuing to enjoy his financial support of the conclusion of the appeal proceedings [18]. The Appellant told me that they continued to enjoy that support, but argued that this deadline had not yet passed. He accepted that it was still the case that no step had been taken toward a divorce, and that the couple remained married.
15. As a married woman, I am satisfied that the Appellant's mother continues to enjoy "family life" with her husband for the purposes of Article 8(1). That does not prevent her enjoying "family life" with her adult son, but it does place the claim that she does so into its proper context.
16. The Judge accepted that the Appellant helped in the household, and that his mother had told her GP on 2 April 2018 that he was caring for her. The Judge accepted that he provided her with emotional support but did not accept that this amounted to more than the usual love and affection that adult offspring show to their parents in times of ill-health or infirmity through age. Thus he rejected the claim that the relationship between them amounted to "family life", having

directed himself that the test in Kugathas [2003] INLR 170 required an element of dependency beyond that usually found, and that the usual emotional ties between adult son and mother would not without more amount to “family life” for the purposes of Article 8(1) [13].

17. The Judge accepted however that the relationship between the Appellant and his mother formed the substantial part of the “private life” enjoyed by both of them. Indeed it was the only aspect of the Appellant’s “private life” upon which he was given any evidence [14]. That was not however the case in relation to the Appellant’s mother. Beyond the time spent working in her husband’s shop, there was evidence of the Appellant’s mother having formed relationships with two neighbours, of sufficient strength that they gave evidence to the FtT in support of her. There was also her relationship with her husband: whatever the Appellant may have thought of the strength of that marriage, the fact remained that neither his mother, nor his step-father had yet taken any step to terminate it by divorce.
18. The Judge accepted that Article 8(1) was engaged by the decision under appeal, and he therefore turned pursuant to Article 8(2) to an assessment of the proportionality of the decision.
19. In the circumstances I am not satisfied the Judge fell into any error in his approach to the question of whether Article 8(1) was engaged. He accepted the Appellant’s claim that it was.
20. However, having accepted that the Appellant was providing emotional support to his mother, and that her marriage had broken down, the Judge had clearly accepted that the nature of the relationship between mother and adult son had materially altered and strengthened during the time he had spent in the UK. To the extent that it would be material to do so, I am satisfied that he ought in those circumstances, to have gone on to accept that this relationship constituted “family life” between them.
21. Whilst the distinction between “family life” and “private life” may count for little in the European jurisprudence (the question is simply whether Article 8(1) is engaged, or not) the consequences that follow from section 117B of the 2014 Act are that a material distinction is drawn between them in the context of Article 8(2), in relation to the weight that Parliament has stipulated can be attached to each of them, by virtue of section 117B(5). Thus only little weight can be attached to a “private life” formed in the UK at a time when the claimant’s

immigration status is “precarious”. There is no such restriction imposed in relation to the weight that can be given to “family life” in the Act.

22. On the other hand this decision contains no self direction in relation to section 117B(5), and no phrase to suggest that the Judge felt obliged to attach only limited or little weight to the “private life” that he had found existed.

Error of law in relation to Article 8(2)?

23. Whether it bore the legal badge of “private life” or “family life” it is plain that the Judge took fully into account all of the evidence concerning the nature of the Appellant’s relationship with his mother. He accepted that evidence. The Appellant is unable to point to any evidence that was left out of account, and is unable to identify any arguable error of law in the findings of primary fact that were made upon the evidence concerning the support available to his mother, her ability to work, and the friendships she would continue to enjoy, even if the Appellant were to leave the UK [19].
24. If the Appellant wishes to live with, and continue to care for his mother, then it was open to him to do so in Pakistan where they are both citizens. Alternatively it was open to him to return to Australia and put himself into a position to sponsor an entry clearance application by her to Australia. The evidence did not persuade the Judge that the Appellant’s mother would be unable to cope in his absence, given the NHS support, and the support of her friends in the UK.
25. The Judge was obliged to note that the Appellant did not meet the requirements of the Immigration Rules for a grant of leave to remain as the carer for an adult dependent relative, or indeed in any other category.
26. The Judge was obliged to note that although the Appellant entered the UK lawfully with a visit visa on 15 February 2018 his immigration status was as a result of the most precarious. Any “private life” or “family life” formed in the UK after 15 February 2018 had to be viewed in that light when being balanced against the relevant public interest.
27. Equally the Judge was obliged by virtue of section 117B(3) to identify that the Appellant was not financially self sufficient. He had no savings, was not entitled to work, and had always been dependent upon his step-father for financial support in the UK – although it was his case that this support would be withdrawn upon the conclusion of the appeal, whatever the outcome. The

consequence was that the public interest in removal was enhanced.

28. The fact that the Appellant is fluent in English, having been educated in Australia, does not weigh positively in his favour. It is a neutral factor for the purposes of section 117B(2); AM (Malawi) [2015] UKUT 260 and Rhuppiah [2018] UKSC 58.
29. In the circumstances I am not satisfied that the FtT did err materially in the approach taken to the Article 8(2) assessment of the proportionality of the decision under appeal. The assessment of where the balance of proportionality lay was in my judgement the correct one, even if the relationship between mother and adult son had been identified as amounting to “family life”. Standing back to look at those findings of primary fact in the round, and asking myself how a fair balance should be struck between the competing individual interests and the public interest, applying the proportionality test; Agyarko [2017] UKSC 11, I am satisfied that there could only be one outcome; the appeal must be dismissed.
30. In the circumstances, even if the Judge erred in his approach to the question of whether the relationship at the heart of the appeal constituted “private life” or “family life”, there is no need for me to go on to re-make the decision myself, or to remit the appeal to the First-tier Tribunal to do so. I am not required by either statute or the procedure rules to re-make a decision once an error of law has been identified: the provision is permissive.
31. In the circumstances the decision of the FtT to dismiss the human rights appeal is confirmed.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 26 June 2019 contains no material error of law in the decision to dismiss the Appellant’s human rights appeal which requires that decision to be set aside and remade.

The decision to dismiss the human rights appeal is accordingly confirmed.

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed
Deputy Upper Tribunal Judge JM Holmes
Dated 25 October 2019