



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/05693/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 5 April 2019

Decision & Reasons Promulgated  
On 12 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

ANUM UL KHAIR  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - Sheffield

Respondent

Representation:

For the Appellant: Ms P Solanki (counsel) instructed by Kingwright Solicitors  
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Row promulgated on 9 November 2018, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 9 February 1996 and is a national of Pakistan. On 23 October 2017 the Appellant applied for entry clearance to join her father, who has

been granted refugee status, in the UK. On 22 January 2018 the Secretary of State refused the Appellant's application.

### The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Row ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 2 January 2019 Judge Neville granted permission to appeal stating *inter alia*

2. The second ground asserts that the Judge erred at para 16 in treating a "special degree of dependency" as a necessary component of family life capable of being afforded protection under article 8. The appellant is arguably correct that this runs contrary to Ghising v SSHD [2012] UKUT 160, as discussed in PT (Sri Lanka) [2016] EWCA Civ 612 at 23-25. This is arguably material, as being inseverable from the other reasons given by the Judge at para 15.

3. The other grounds are makeweights, but given their interrelationship they may all be argued.

### The Hearing

6. (a) For the appellant, Ms Solanki moved the grounds of appeal. She adopted the terms of her skeleton argument and told me that the Judge applied the wrong test when considering whether or not article 8 family life exists between parents and a 22-year-old daughter (who had always lived with her parents). Ms Solanki reminded me that the sponsor was granted refugee status in August 2017. In October 2017 this appellant and her mother apply for entry clearance to be reunited with the appellant's father (the sponsor). The appellant's mother's application was successful. The appellant's application was refused by the respondent's decision dated 22 January 2018.

(b) Ms Solanki told me that the only part of paragraph 352D of the rules the appellant cannot meet is 352D(ii), which says

352D. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom in order to join or remain with the parent who currently has refugee status are that the applicant:

(i) is the child of a parent who currently has refugee status granted under the Immigration Rules in the United Kingdom; and

(ii) is under the age of 18; and....

Because the appellant was 21 years old at the date of decision the case can only succeed on article 8 outside the rules.

(c) Ms Solanki took me to [16] the decision. In the first sentence of [16] the Judge searches for

some special degree of dependency

in doing so (counsel for the appellant told me) the Judge applies the wrong test.

(d) Ms Solanki told me that, to reach his decision, the Judge must have ignored the fact that the appellant's mother entered the UK and then returned to Pakistan to be with the appellant throughout May and June 2018. She told me that the Judge's finding in the final sentence of 15 ignores evidence of the appellant's mother's reluctance to leave the appellant alone in Pakistan. Ms Solanki told me that the Judge did not take account of cultural and traditional standards in Pakistan and did not acknowledge that the appellant is an unmarried young lady who has only ever lived with her parents, and who cannot be regarded as independent in Pakistani society. She told me that the Judge's findings at [17] to [19] are not sustainable in the light of Mansoor v SSHD [2011] EWHC 832 Admin

(e) Ms Solanki urged me to set the decision aside.

7. For the respondent, Mr Walker told me that the appeal is no longer resisted. He told me that the decision is tainted by material errors of law; that the wrong test had been applied in trying to determine whether or not article 8 family life exists, and that the Judge had made inadequate and inconsistent findings of fact. He said that he would have no objection if I set the decision aside and substitute my own decision.

### Analysis

8. At the date of decision the appellant was 21 years old. It is beyond dispute that the sponsor is the appellant's father and the sponsor was granted refugee status in the UK in August 2017. Before fleeing from Pakistan, the sponsor lived with the appellant and the appellant's mother in Pakistan. The appellant is unmarried and dependent upon her parents.

9. In Ghising (family life - adults - Gurkha policy) [2012] UKUT 00160 (IAC) the Tribunal said that a review of the jurisprudence discloses that there is no general proposition that Article 8 can never be engaged when the family life it is sought to establish is between adult siblings living together. Rather than applying a blanket rule with regard to adult children, each case should be analysed on its own facts, to decide whether or not family life exists, within the meaning of Article 8(1). Whilst some generalisations are possible, each case is fact-sensitive.

10. In the first sentence of [16] of the decision the Judge misdirected himself in law. The Judge says

family life does not ordinarily extend to the relationship between an adult child and her parents in the absence of some special degree of dependency.

11. That sentence misinterprets the guidance given in Ghising (family life - adults - Gurkha policy) [2012] UKUT 00160 (IAC); PT (Sri Lanka) v Entry Clearance Officer, Chennai [2016] EWCA Civ 612 and Singh [2015] EWCA Civ 630. What the Judge should have looked for was evidence of a degree of dependency extending beyond the normal emotional ties. The Judge should have considered the factual position of a young lady who has only ever lived with her parents and has not established an independent life.

12. The decision is tainted by material error of law. I set it aside. There is sufficient material available to allow me to substitute my own decision.

### Findings of fact

13. The appellant is a national of Pakistan born on 9 February 1996. The appellant has two sisters and brother. All of her siblings are married and pursue independent lives with their new families. The appellant is still single. The appellant lived with both of her parents until her father (the sponsor) left Pakistan on 3 March 2015.

14. The appellant's father left Pakistan for the UK and on 21<sup>st</sup> of August 2017 was granted refugee status. The appellant remained in Pakistan with her mother, remaining in the same household that she had been brought up in and had always lived in. The appellant has never established her own independent life, and has always been dependent upon her parents.

15. On 23 October 2017 the appellant and her mother applied for entry clearance so that they could be reunited with the sponsor. The appellant's mother's application was successful. The respondent refused the appellant's application on 22 January 2018. It is against that decision that the appellant appeals.

16. On 24 February 2018 the appellant's mother entered the UK. In February 2018 the sponsor was diagnosed with prostate cancer. In May 2018 the appellant's mother return to Pakistan to look after the appellant and did not re-enter the UK until June 2018.

17. The appellant's only brother has now left Pakistan and lives in Nigeria. One of the appellant's sisters lives with her husband in Germany. The appellant's remaining sister is married and lives in a separate city in Pakistan.

18. The appellant now lives alone in Pakistan. Her parents sent her money regularly and she is entirely dependent upon their money for her maintenance. The appellant has never pursued an independent life and still relies on her parents.

### The Immigration Rules

19. The only reason the appellant cannot meet the requirements of the immigration rules is that she celebrated her 18<sup>th</sup> birthday three years ago.

Article 8 ECHR

20. In Hesham Ali (Iraq) v SSHD [2016] UKSC 60 it was made clear that (even in a deportation case) the Rules are not a complete code. Lord Reed at paragraphs 47 to 50 endorsed the structured approach to proportionality (to be found in Razgar) and said "what has now become the established method of analysis can therefore continue to be followed..."

21. In Agyarko [2017] UKSC 11, Lord Reed (when explaining how a court or tribunal should consider whether a refusal of leave to remain was compatible with Article 8) made clear that the critical issue was generally whether, giving due weight to the strength of the public interest in removal, the article 8 claim was sufficiently strong to outweigh it. There is no suggestion of any threshold to be overcome before proportionality can be fully considered.

22. I have to determine the following separate questions:

- (i) Does family life, private life, home or correspondence exist within the meaning of Article 8
- (ii) If so, has the right to respect for this been interfered with
- (iii) If so, was the interference in accordance with the law
- (iv) If so, was the interference in pursuit of one of the legitimate aims set out in Article 8(2); and
- (v) If so, is the interference proportionate to the pursuit of the legitimate aim?

23. Section 117B of the 2002 Act tells me that immigration control is in the public interest. In AM (S 117B) Malawi [2015] UKUT 260 (IAC) the Tribunal held that an appellant can obtain no positive right to a grant of leave to remain from either s117B (2) or (3), whatever the degree of his fluency in English, or the strength of his financial resources. In Forman (ss 117A-C considerations) [2015] UKUT 00412 (IAC) it was held that the public interest in firm immigration control is not diluted by the consideration that a person pursuing a claim under Article 8 ECHR has at no time been a financial burden on the state or is self-sufficient or is likely to remain so indefinitely. The significance of these factors is that where they are not present the public interest is fortified.

24. To succeed, the appellants would have to establish that family life within the meaning of article 8 exists between the appellant and sponsor. It is argued that there is more than mere emotional ties and that there is a relationship of dependency between the sponsor and the appellant. In simple terms, is the father/daughter relationship the same as it was when this appellant was 17 years and 364 days old?

25. In Kugathas v SSHD (2003) INLR 170 the Court of Appeal said that, in order to establish family life, it is necessary to show that there is a real committed or effective support or relationship between the family members and the normal emotional ties between a mother and an adult son would not, without more, be enough. In PT (Sri Lanka) v Entry Clearance Officer, Chennai [2016] EWCA Civ 612 it was held that some tribunals appeared to have read Kugathas v SSHD (2003) INLR 170 as

establishing a rebuttable presumption against any relationship between an adult child and his parents or siblings being sufficient to engage Article 8. That was not correct. Kugathas required a fact-sensitive approach, and should be understood in the light of the subsequent case law summarised in Ghising (family life – adults – Gurkha policy) [2012] UKUT 160 (IAC) and Singh [2015] EWCA Civ 630. There is no legal or factual presumption as to the existence or absence of family life for the purposes of Article 8 nor is there any requirement of exceptionality. It all depends on the facts. The love and affection between an adult and his parents or siblings do not of itself justify a finding of a family life. There has to be something more. A young adult living with his parents or siblings would normally have a family life to be respected under Article 8. A child enjoying a family life with his parents does not suddenly cease to have a family life at midnight as he turned 18 years of age. On the other hand, a young adult living independently of his parents might well not have a family life for the purposes of Article 8.

26. It is beyond dispute that the appellant has never pursued an independent life. The unchallenged evidence is that the appellant lived with the sponsor and her mother from birth until March 2015, and still lived with her mother (whilst in regular contact with the sponsor) at the date of decision. The reliable evidence tells me that the appellant is still dependent on her parents

27. On the facts as I find them to be, the appellant's mother has travelled back to Pakistan to make arrangements for the appellant's care, accommodation and maintenance. On the facts as I find them to be, the appellant and sponsor are in daily contact. On the facts as I find them to be, there is more than just emotional ties between the appellant and the sponsor. Throughout her life the appellant has been dependent upon the sponsor. On those facts, I find that article 8 family life exists between the appellant and sponsor.

28. The impact of the respondent's decision is that the appellant's circumstances are uncertain. The respondent's decision creates uncertainty for the appellant and sponsor; the respondent's decision creates division where it did not previously exist; the respondent's decision stands in the way of the established way of life for this family, it interferes with family life.

29. In Chengjie Miao v SSHD 2006 EWCA Civ 75 the Court of Appeal noted that the onus lies upon the Respondent to show that the interference or lack of respect is "*necessary in a democratic society*" for one of the stated interests. As the Court of Appeal said at paragraph 12 of the determination "*To do this the State must show not only that the proposed step is lawful but that it is sufficiently important to justify limiting a basic right; that it is sensibly directed to that objective; and that it does not impair the right more than is necessary. The last of these criteria commonly requires an appraisal of the relative importance of the State's objective and the impact of the measure on the individual. When you have answered such questions you have struck the balance*".

30. I find that the respondent relies solely on a statutory presumption. Against that statutory presumption I weigh the quality of family life which the appellant enjoys. The facts and circumstances of this case raise exceptional circumstances which

indicate that preventing the appellant from reunification with her parents, who provide for her and who have provided for her throughout her life, would be unjustifiably harsh. The appellant has not established an independent life, even though she has been separated for the sponsor since March 2015. On those facts, I find that the respondent's decision is a disproportionate interference with the appellant's article 8 rights.

31. When I weigh all of these matters, I can only come to the conclusion that the public interest in immigration control is outweighed by the impact that the respondent's decision has on the appellant. I find that this appeal succeeds on article 8 ECHR grounds.

## CONCLUSION

**32. The decision of the First-tier Tribunal promulgated on 9 November 2018 is tainted by a material error of law. I set it aside.**

**33. I substitute my own decision.**

**34. The appeal is allowed on article 8 ECHR grounds.**

Signed  
Deputy Upper Tribunal Judge Doyle

Date 11 April 2019

A handwritten signature in grey ink that reads "Paul Doyle". The signature is written in a cursive, flowing style.