



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

Appeal Number: HU/18262/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 13 June 2019**

**Decision & Reasons Promulgated
On 02 August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**CLIVE [C]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Agbim of Cleveland Law

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Andonian promulgated on 5 April 2019 dismissing the appeal against a decision of the Respondent dated 2 August 2018 on human rights grounds.
2. The Appellant is a citizen of the United States of America born on 16 January 1997. He visited the United Kingdom as a child but more recently last entered the United Kingdom on 10 May 2017 as a visitor. He was granted leave to remain until 30 May 2017 in accordance with his indication that he was intent on visiting for only two weeks. (It is not

usually the case that a visitor is limited in such a way in the grant of leave to enter, the usual period being six months. It may be that the limitation was prompted in some respects by suspicion as to the Appellant's intentions given that it is recorded in the 'reasons for refusal' letter ('RFRL') herein that when he arrived in the United Kingdom he was in possession of his educational and vaccination certificates and his X-Box games consul.)

3. On 30 May 2017 the Appellant applied for leave to remain. The application was supported by a covering letter dated 26 May 2017 from his representatives. The application was made on the basis of private and family life with reference to Article 8, and also with reference to "*exceptional circumstances*". The substance of the application as set out in the application form and the covering letter was that the Appellant wished to remain in the United Kingdom with his mother and his brother. In this regard emphasis was placed in particular upon the serious disabilities of the Appellant's brother 'T' (d.o.b. 22 August 2002) who it was said required 'around-the-clock' care, and the deteriorating health of the Appellant's mother who had been looking after T alone for a significant period of time. It was said that the arrival of the Appellant had improved matters significantly.
4. It is a curious feature of the application that some of the supporting medical documents are dated within a day or two of the Appellant's arrival: for example, a letter from the GP responsible for the care of the Appellant's mother is dated 11 May 2017. There is also supporting evidence by way of a letter from Hackney Ark Children and Young People Centre for Development and Disability in respect of T referencing the Appellant's contribution dated 24 May 2017. This circumstance was commented upon in the RFRL. Be that as it may, the Appellant provided further supporting medical documents in respect of both his brother and his mother and also a letter from his brother's school dated 1 March 2018.
5. The Respondent refused the application for leave to remain for reasons set out in a RFRL dated 2 August 2018.
6. The Appellant appealed to the IAC.
7. The appeal was dismissed for the reasons set out in the Decision and Reasons of Judge Andonian.
8. The Appellant applied for permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Ford on 9 May 2019.

9. In the premises there appears to be no dispute as to the severity of the Appellant's brother's disabilities. These are detailed in the supporting medical evidence and are also summarised in the decision of Judge Andonian. Nor is it suggested that there are anything other than very particular care needs arising by reason of such disabilities. Again, this is a matter set out in the various supporting medical documents and is a matter of consideration in the course of the decision of the First-tier Tribunal.
10. The appeal was brought on Article 8 grounds, and necessarily involved a wider consideration of aspects of the Appellant's private and family life: however, at the core of the application - and inevitably the focus in the appeal - was the relationship between the Appellant and his brother, and the Appellant's role in providing care and support for his brother, both in general terms and by way of providing much needed assistance to his mother (who provided evidence regarding the deterioration of her physical abilities). The issues in this regard did not, it seems to me, involve any real dispute as to the primary facts in respect of T's condition and circumstances; rather the focus was the availability or otherwise of care and support if required.
11. In this latter regard Judge Andonian in substance concluded that the Appellant had not really provided anything approaching adequate evidence that his brother's care needs would not be met if he were to leave the United Kingdom. In this context the Judge expressly recognised that there might be a difference between "*the best care*" that the Appellant might provide and the provision by the local authority in which case the Appellant would be "*adequately cared for*" (paragraph 34).
12. Having made references to the evidence and the enquiries made by the Appellant and more particularly his mother in respect of the availability of care - e.g. see paragraphs 28-32 of the Decision - the Judge found "*She has not asked for other help from Social Services and other organisations who could assist if the Appellant's mother approached them*" (paragraph 33). The Judge concluded in this regard "*The truth of the matter is that insufficient enquiries have been made for full-time carers*" (paragraph 34).
13. The grounds of appeal are broken down into six separate grounds which contain an element of duplication and overlap. It seems to me that in substance the grounds may be characterised as asserting disagreement with the evaluation of the First-tier Tribunal Judge and in my judgment ultimately do not identify any specific error of law.

14. The first ground of appeal disputes the Judge's conclusion that there were not exceptional circumstances in the case: it is submitted that the Judge had fallen into error at paragraphs 13-17 of the Decision. However it is absolutely clear that those paragraphs of the Decision do not represent the Judge's reasoning but are part of a detailed rehearsal of the contents of the Respondent's RFRL. To that extent the first ground of appeal does not directly challenge the substance of the Judge's own reasoning by referencing those particular paragraphs.

15. Nonetheless, it is the case that the Judge reached this conclusion at paragraph 32:

"I have taken into account all the factors in this case in the round and holistically, but it is my view that there are no exceptional circumstances in this case for the Appellant to remain in the UK".

16. The thrust of the first ground is otherwise that it is suggested that it was impractical to expect the National Health Service to provide the Appellant's mother with 24 hours a day care or NHS support. It seems to me that this mischaracterises the reasoning of the Judge. The Judge in fact did not accept that the Appellant's brother required 24 hour care, in particular because he spent some of the time at school. The Judge's essential reasoning was based on the absence of any evidence that further care as required would not be made available by the local authority, there having been no request for such care. Moreover, in this context it was noted that proper enquiries had not been made by the Appellant's mother because she was in essence in what was described as a "comfort zone" (paragraph 33) by reason of the fact that the Appellant was for the moment offering her assistance; the real point again being that the mother had not made enquiries as to what care might be available in the event of either increasing care needs or her decreasing ability to meet the current care needs in the absence of the Appellant.

17. Grounds 2 and 3 seek to criticise the Judge's reasoning in the Decision at paragraphs 18 and 20 - which are again paragraphs in which the Judge is merely setting out the Respondent's case from the RFRL. Accordingly these grounds do not constitute a criticism or challenge to any specific aspect of the Judge's own independent reasoning.

18. In any event, the substance of Grounds 2 and 3 is really to submit that the Judge should have attached more weight than it is suggested that he did to particular items of supporting evidence. I can see nothing in the grounds that constitutes a pleading of error of law rather than a dispute or disagreement with the fact-finding and the ultimate decision of the Judge.

19. Similarly Ground 4 is drafted as nothing more than a disagreement: "*The learned Immigration Judge is wrong to suggest that the Appellant's presence in the United Kingdom is not crucial in the care provided to his brother ...*".
20. Ground 5 similarly pleads that the Judge was "*wrong*" in respect of the availability of 24 hour home care. As noted above, the Judge, whilst referring to the possibility of 24 hour care, did not actually find that that was a requirement. It seems to me, again, not only is this a mere disagreement but it misses the essential basis of the Judge's reasoning.
21. Ground 6 for the main part also seeks to dispute the Judge's approach to the case by allegation of not applying "*enough weight*" to the supporting medical evidence. This is not to identify an error of law. It is asserted in this context that the Judge has failed to give "*paramount*" consideration to the best interests of T who is still a minor, and in this regard reference is made to section 55 of the Borders, Citizenship and Immigration Act 1989. I remind myself that the duty under section 55 is a duty imposed on the Secretary of State. To that extent it is clear that the Secretary of State has had reference to that duty in the RFRL quoting specifically the provision of section 55 and addressing it. Insofar as the best interests of T were a matter of consideration in the appeal, although there is no express reference to section 55 in the Decision it is plain and obvious that the focus of the Judge's reasoning related to the issue of the welfare of T and how his particular needs could be met in the absence of the Appellant. That was the primary basis upon which the application and appeal were advanced. In the circumstances it seems to me clear enough that the Judge has had regard to the very particular circumstances of T and the necessity of protecting and promoting his best interests by ensuring that he had adequate care.
22. I also remind myself that 'best interests' would not be a determinative feature in this appeal, and it is clear that the Judge has had regard to the circumstances of the Appellant's arrival in the United Kingdom and the absence of any expectation that he might be permitted to remain. In this context the Judge has also had regard to the public interest requirements and the five step stage under **Razgar** (see paragraph 37).
23. I recognise and acknowledge the very particular and difficult circumstances of the Appellant's brother, and indeed of the Appellant's mother in her attempts to care for her severely disabled son. Reference is made to this in particular at paragraph 31 of the Decision of the First-tier Tribunal:

“The Appellant’s mother has incredible emotional resilience and patience and has brought her son up as part of the family and community and with the involvement of friends and neighbours, but it is not easy especially as the son has grown into adolescence and the responsibility is very great, considering the future and the long terms needs of the son”.

However, notwithstanding the sympathy that is to be felt for the Appellant’s family in their very particular circumstances, I can identify nothing amounting to an error of law in the approach of the First-tier Tribunal Judge whether by reference to the Grounds of Appeal or otherwise.

24. For the avoidance of any doubt, so far as the family relationship between the Appellant and his mother is concerned, it is to be noted pursuant to the application letter that there has been a substantial period of separation because of marital breakdown, so the covering letter indicates that the Appellant had been separated from his mother at a young age and taken to America by his father. He is now an adult whose avowed intention was only to come initially as a visitor - although as I have indicated there must be some doubt in that regard; the reality is that he had an independent life as a young adult in the United States of America prior to his last arrival in the UK. The consequences of the Respondent’s decision only really puts the Appellant back into the position he would have been in if he had not overstayed his leave to enter - that is to say, a person visiting the mother with whom for the main part he had not grown up.

Notice of Decision

25. The decision of the First-tier Tribunal contained no error of law and accordingly stands.
26. The appeal remains dismissed.
27. No anonymity direction is sought or made.

Signed:

Date: **29 July 2019**

Deputy Upper Tribunal Judge I A Lewis

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed:

Date: **29 July 2019**

Deputy Upper Tribunal Judge I A Lewis
(*qua* a Judge of the First-tier Tribunal)