



Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: HU/23656/2018

THE IMMIGRATION ACTS

**Heard Remotely at Manchester
CJC**

Decision & Reasons Promulgated

On: the 26th October 2020

On: 29th October 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Jagtar Singh

(no anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr O'Brien, Counsel instructed by Lexmark Legal Associates

For the Respondent: Mr McVeety, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of India born on the 5th May 1961. He appeals with permission against the decision of the First-tier

Tribunal (Judge GD Davidson) to dismiss his appeal on human rights grounds.

2. The Appellant is a long term overstayer with no viable claim to leave to remain under the Immigration Rules. On appeal he submitted that he is nevertheless entitled to leave to remain because to do otherwise would place the Secretary of State in breach of her obligations under s6(1) of the Human Rights Act 1998: the Appellant submits that it would be a disproportionate, and so unlawful, interference with his Article 8 rights if he were to be refused leave to remain in the United Kingdom. The basis of his claim is that he enjoys a significant family/private life with his sister, brother-in-law and nephew in the United Kingdom. The child is disabled, and the Appellant's brother-in-law suffers from schizophrenia. As such, it is claimed, the Appellant's sister is heavily dependent on his support. It is further submitted that the Appellant has a close relationship with his nephew such that it would be contrary to that vulnerable child's best interests if he were to have to leave the United Kingdom.
3. The First-tier Tribunal dismissed the appeal.
4. Permission was granted in limited terms by Upper Tribunal Judge Gill on the 22nd October 2019. Judge Gill acknowledged that the Appellant had not attended his appeal, and so the question of proportionality had been determined in his absence. Judge Gill noted the Appellant's assertion that he never received the Notice of Hearing, that he had apparently nothing to gain from his non-attendance, and considered it arguable that there had been some procedural impropriety/unfairness in the First-tier Tribunal proceeding in his absence.
5. Permission was further granted on the ground that there may have been some discrete procedural unfairness in that the hearing may have proceeded without the Tribunal having before it all of the relevant documentary evidence. The Respondent's bundle contained only four items: a pre-action protocol letter sent by the Appellant's representatives, the application form, a statement by the Appellant and the refusal letter. The Respondent had not included in that bundle various items of medical evidence that had been submitted with the application. Judge Gill considered it arguable that through no fault of its own, the Tribunal reached its decision without having had regard to all of the pertinent evidence.
6. Judge Gill expressly refused permission on all other grounds pleaded.
7. Before me the parties agreed that in fact I need not deal with both grounds. That was because they were able to agree on this. That at the date of the appeal the only documentary evidence before the First-tier Tribunal was the Respondent's bundle, containing the

items I mention above. For whatever reason a whole tranche of evidence submitted to the Respondent did not make it into that bundle: this included medical evidence relating to the respective conditions of the Appellant's nephew and brother-in-law, DWP letters, and a letter from the nephew's school. The Appellant had served no bundle of his own, on his case because he was unaware that the hearing was due to take place.

8. I am satisfied that through no fault of its own the Tribunal did proceed to determine the appeal without sight of important evidence that had, pre-hearing, already been supplied by the Appellant. That was a procedural irregularity rendering the decision unfair. It follows that that the decision in the appeal must be set aside to be remade.

Decisions

9. The determination of the First-tier Tribunal contains material error of law and it is set aside.
10. The decision in the appeal is to be remade *de novo* in the First-tier Tribunal by a Judge other than Judge GD Davison.
11. There is no order for anonymity.



Upper Tribunal Judge Bruce
26th October 2020