IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000312
First-tier Tribunal No:
HU/53906/2022
IA/06013/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 May 2023

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

NARAYANAN RAMAKRISHNAN
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr I Khan of Counsel, instructed by Aramm Legal Limited
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 2 May 2023

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Raymond promulgated on 13 December 2022, in which the Appellant's appeal against the decision to refuse his human rights claim dated 27 June 2022 was dismissed.

3. The Appellant is a national of India, born on 20 September 1985, who first entered the United Kingdom on 7 August 2010 as a Tier 4 (General) Student, with further leave to remain granted which was subsequently curtailed to 27 May 2013. The Appellant has remained in the United Kingdom unlawfully since. On 9 July 2021 the Appellant applied for leave to remain on the basis of his private life.

4. The Respondent refused the application the basis that the Appellant did not meet the requirements of paragraph 276ADE of the Immigration Rules, in particular that there were no very significant obstacles to his reintegration in India, a country in which he had lived up to the age of 24, where his mother lived and where he had retained knowledge of the life and culture. The Appellant did not make a claim based on family life, but relied on caring for his father in the United Kingdom. The Respondent considered that there were no exceptional circumstances for a grant of leave to remain outside of the Immigration Rules and that there was no sufficient evidence of the Appellant's claimed relationship, specifically of any exceptional dependency or that refusal of the Appellant's application would cause his father serious hardship.

5. Judge Raymond dismissed the appeal in a decision promulgated on 13 December 2022 on all grounds. The decision includes extensive references to the evidence before the First-tier Tribunal, particularly the medical evidence, but concluded that the Appellant had fabricated both his relationship with his claimed father and his claimed caring role and in any event, the other person would not be left without care in the United Kingdom. I return below to the reasons given for those findings. The First-tier Tribunal further found that the Appellant could not meet any of the requirements for a grant of leave to remain under the Immigration Rules and overall his removal would not be a disproportionate interference with his right to respect for private and family life under Article 8 of the European Convention on Human Rights.

The appeal

6. The Appellant's grounds of appeal are incredibly poorly drafted and the skeleton argument submitted prior to the hearing in the Upper Tribunal with the stated aim of clarifying them offers no such clarity. The grounds include various assertions that the First-tier Tribunal failed to take into account the extensive evidence about the Appellant and his father and their uncanny physical resemblance and made statements about unfair questioning, a prejudicial approach, the wrong weight attached to evidence and the wrong use of the balance of probabilities. None of this was particularised or identified any arguable errors of law and the majority of the document contained unsupported statements and disagreement, and/or submissions on the merits of the appeal.

7. There were two points identified in the grant of permission which were contained in the grounds of appeal which could constitute an arguable error of law (although the grant was not expressly limited to these two points). The first was that the Judge had arguable failed to take into account evidence that showed the Appellant had been living with his claimed father in the UK since 2014, with an erroneous reference to only one bank statement from 2022. That however was on the erroneous basis that documents submitted with the application for permission to appeal, including tenancy agreements, were before the First-tier Tribunal when they were not. The only document before the First-tier Tribunal showing the Appellant's address was a single bank statement from 2022. The Appellant's solicitors were not at all open or transparent in the application for permission to appeal as to which documents were and were not before the First-tier Tribunal. There can be no error of law in the First-tier Tribunal not taking into account documents which were simply not before it.

8. The second was that it was arguable that the Judge erred by characterising the Appellant's failure to adduce DNA evidence as "incredible" when the Respondent

did not question the relationship in the refusal letter and the matter was not raised in the Respondent's review as an issue in the appeal. At the oral hearing, although Mr Khan did not formally resile from any of the grounds of appeal, which he appreciated were "all over the place", he relied in oral submissions on a single ground of appeal, that being this second point in relation to DNA evidence which he submitted infected all other credibility findings, including those in relation to whether care was provided. Mr Khan submitted that if the DNA evidence now available had been accepted, then the written and oral evidence of the Appellant and his father would have been accepted as credible.

9. In the days immediately prior to the hearing, as well as accompanying the application for permission to appeal, the Apellant's solicitors submitted a range of further evidence in piecemeal fashion, including DNA evidence (which does show the Appellant is related to his father as claimed), tenancy agreements and further written statements; as well as requests to bring additional witnesses to give oral evidence. There was no application under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to adduce this further evidence and none was made at the hearing before me, Mr Khan accepting that these further documents were not relevant to the issue of whether there was a material error of law in the decision of the First-tier Tribunal and could only potentially be relevant to any re-making of the appeal if such an error was found. No reliance was placed on these documents at this stage and I have not therefore taken them into account. The Appellent's solicitors, through a flurry of further documents and correspondence with the Upper Tribunal, displayed a lack of understanding of both the appeal process at this level and the clear directions given when permission was granted, which included deadlines and signposting to the need for an application to be made to adduce any further evidence. Together with the very poor drafting of grounds of appeal and misleading inclusion of documents not before the First-tier Tribunal; this shows conduct below what is reasonably to be expected of a legal representative acting in this field.

10. On behalf of the Respondent, Ms Rushforth relied on the rule 24 response and submitted that even if there was an error as to the DNA evidence (which was not accepted) it would not in any event be material to the outcome of the appeal given the very detailed and careful decision which showed at best limited evidence of residence and insufficient evidence of any care; none of which had been directly challenged in the grounds of appeal and were not infected by the short paragraph on DNA evidence.

11. In relation to the DNA point, Ms Rushforth submitted that this was a rational finding open to the Judge to make. It was not surprising that the issue had not been raised by the Respondent at an earlier stage, because the significant volume of evidence from medical records from which questions arose as to the relationship were only submitted to the First-tier Tribunal after the Respondent's review and not submitted with the original application. There were difficulties in the evidence before the First-tier Tribunal, which included that the Appellant's claimed father's name did not match up between all documents and that he had previously stated his family were in Canada and/or all had died.

Findings and reasons

12. The sole ground of appeal pursued on behalf of the Appellant was that the First-tier Tribunal erred in law in finding it was "incredible" that no DNA evidence had been produced in circumstances where this had not been put in issue by the

Respondent, a matter which it was submitted infected all other adverse credibility findings in the appeal. To assess this, it is necessary to consider the structure and content of the decision, which I summarise rather than quoting lengthy passages from it (save where helpful to do so).

13. The structure of the decision, following the introduction and history, includes a detailed summary of the medical evidence in paragraphs 5 to 8; evidence in relation to the family relationship in paragraphs 9 to 20 and evidence of care in paragraphs 21 to 47. There followed a summary of the Appellant's evidence as to his immigration history and time in the United Kingdom in paragraphs 48 to 55 and the evidence of Mr Ramakrishna Snr in paragrsph 56 to 69. Mr Khan did not identify any matters which were not expressly referred to or considered in these detailed passages setting out the evidence before the First-tier Tribunal.

14. The findings of the First-tier Tribunal begin at paragraph 71 of the decision, with references back to the evidence set out in detail in the first parts of the decision. In relation to care provided by the Appellant, the Judge finds that there is only scant evidence of this despite the very large volume of medical evidence which includes little if any reference to family support, includes documents where names have been blanked out, only one document names the Appellant and only a few references are made to a 'son'. Further, there was a lack of evidence about the claim of the Appellant to be living with Mr Ramakrishna Snr, there being only a single bank statement for the Appellant from 2022, a claimed work history that was incompatible with the claimed constant caring role and no evidence of benefits or in particular of any assessment for disability benefit or support.

15. Following the detailed analysis of the evidence and findings as summarised above as to the nature of the relationship, the decision then goes on to find as follows:

"84. I therefore conclude on the balance of probabilities from the very substantial weight of my preceding findings that his claimed caring role is a complete fabrication.

85. I am confirmed in so finding because the voluminous medical evidence relied upon for the appellant and Mr Ramakrishna Snr, and without the respondent having specifically taken the issue, puts into question the claimed parental connection between them, upon which is purported to pivot the care that the appellant has been providing since 2010.

86. It is impossible, on the issue of parental connection, to reconcile the disparate evidence whereby Mr Ramakrishna Snr surreptiously abandoned his family, who he said were all dead in any case, then having lived alone in the UK according to his own 2018 declaration, yet having a son who now supposedly lives with him, and a wife who has come to stay in the UK, whilst knowling little about another son, whether in India or in Canada, saying he was Muslim, then with the appellant saying they are Hindu, being in contact with the appellant before he entered in 2010 and yet the appellant having to trace him after entry, and finding he was using the wrong name in hospital.

87. Following on from this last feature, there is the very fact of a disparity in names between himself and his claimed son the appellant, for which the appellant could only provide an incoherent explanation, whilst suggesting as a possible explanation for disparities in the evidence, mental illness suffered by Mr

Ramakrishna Snr, for which there is no medical evidence, but indeed as far back as 2004 a quite contrary finding.

88. These are difficulties as to the claimed parental connection that the appellant and Mr Ramakrishna Snr, and the legal representatives, would have been all too aware of from the medical records they have relied upon, and this very likely explains the bizarre blank and redacted spaces therein found.

89. It is simply incredible in my view that the application and appeal were not grounded upon DNA evidence to support the claimed parental connection, which is the crux of the whole application.

90. I therefore find on the balance of probabilities that the parental connection upon which the application turns is a fabrication."

16. The Judge expressly recognised that the issue of parental relationship had not been raised by the Respondent but was one which arose on the evidence before the First-tier Tribunal, the majority of which was filed and served after the Respondent's review and could not therefore have realistically been raised at any earlier stage. In terms of the structure of the decision, there is what can only be described as a very detailed and thorough analysis of the evidence before the First-tier Tribunl followed by cogent reasons for the findings on both caring and relationship, before there is any reference at all to the absence of DNA evidence in paragraph 89. When reading the preceding paragraphs, the Judge is clearly of the view that the difficulties in the evidence should have been apparent to the Appellant and his legal representatives, particularly given the application and appeal were founded on caring for a parent. It is in that context that it was considered incredible that DNA evidence was not available. Whilst it is arguable that that may be putting it a little high for a point not put in issue by the Respondent and arising only at the hearing, the timing and context of earlier clear findings do not make this an error of law when the decision is read as a whole.

17. In any event, even if the statement that the lack of DNA evidence was simply "incredible" in paragraph 89 was an error, I do not find that it would be material to the outcome of the appeal. This is essentially the final point made in the decision which comes only after clear findings that the Appellant has not established that he is providing any substantial care (if at all) for Mr Ramakrishna Snr and that there are considerable difficulties wih the evidence that they are related at all. In this context, the final comment can not be said to have infected all of the preceding findings and even if DNA evidence could not reasonably be expected, there are clear and cogent reasons why in any event the Appellant did not discharge the burden of proof on him to establish either his relationship or care. This point could not rationally have coloured the Judge's entire view of the evidence, or lack thereof (even discounting the lack of DNA evidence) or infected the detailed reasons for adverse credibility. There is no challenge to the remaining findings on the Appellant's private life; his inability to meet the requirements of the Immigration Rules; nor the crucial finding that the Mr Ramikrishna Snr would not be without care if the Appellant returned to India. On the evidence before the First-tier Tribunal, it was inevitable that this appeal would be dismissed on human rights grounds.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15th May 2023