IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004324
UI-2024-004325
First-tier Tribunal No: HU/52748/2024
HU/52751/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 26th of November 2024

Before

UPPER TRIBUNAL JUDGE MEAH

Between

1. MR THEIVENDRAM PARAMANANTHAM
2. MRS GOWRIE THEIVENDRAM
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K Wass, Counsel instructed by David Benson Solicitors
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 19 November 2024

DECISION AND REASONS

Introduction and Background

1. The appellants are Sri Lankan citizens who were born, respectively, on 03 October 1957 and 31 January 1960. They are a married couple who appeal against the decision of First-tier Tribunal Judge Smyth (FtTJ), promulgated on 07 June 2024 ("the decision"). The appellants had applied for entry to come to the UK for family re-union purposes to join their daughter-in-law adult sons in UK. It was stated that one son had been granted Indefinite Leave to Remain in the UK under the respondent's 'Legacy Scheme' and the other two were recognised refugees who had naturalised as British citizens. The daughter-in-law is also a recognised refugee in the UK.

2. By the decision, the First-tier Tribunal dismissed the appellants' appeals against the respondent's decision dated 06 March 2024, refusing their applications for entry clearance. The applications were considered under the Adult Dependent Relative provisions of the Immigration Rules although it was not disputed that these Rules could not be met and the appellants relied upon Article 8 ECHR under the family life heading and this was the way in which their cases were put before the First-tier Tribunal.

The Grounds

3. In summary, the grounds averred that the FtTJ had erred in his approach on the assessment on whether Article 8 ECHR was engaged in the appellants' cases. This included the FtTJ's findings that there had been no recent face to face meetings between the appellants and their offspring in the UK, and that there was no requirement for such meetings to engage the operation of Article 8 ECHR . It was further averred that the FtTJ had not considered oral evidence given by the witnesses at the hearing and he had also failed to make findings on other evidence of contact through social media and video calls and had erroneously placed an unknown numeric threshold on the appellants in terms of the number of times and/or the length of time communications should occur in order to establish a relationship sufficient to engage Article 8 ECHR.

4. Permission to appeal was granted by FtTJ Dainty on 17 September 2024, in the following terms:

> "1. The application was made in time.
>
> 2. The grounds assert that the judge's conclusion that art 8 was not engaged is affected by errors in giving undue weight to a lack of physical meet ups (in circumstances where the sponsor/children were refugees and the applicants could not get a UK visit visa), failed to consider oral witness evidence as evidence and took an erroneous approach to the Whats app call logs.
>
> 3. It is arguable that the judge made an error in terms of the approach to article 8 but only to the limited extent that the judge was arguably in error at para 19 in stating "[t]here is no evidence before me from the appellants regarding the nature of the conversations" since, as set out in the grounds, there was witness evidence about conversations regarding for example what the Appellants eat, medical appointments and the likeness of their grandson to their son who died. It is arguable that consideration of those parts of the evidence would have changed the approach and result under art 8. Although the matters are all said to be "ground 1" I do not accept the points as regards physical meet ups and what's app are arguable (grounds 1(a) and (c)) – the judge gave perfectly proper reasons for reaching the conclusions he did on those points."

5. The was no Rule 24 response from the respondent.

6. That is the basis on which this appeal came before the Upper Tribunal.

Documents

7. I had before me a composite bundle which included the salient documents including the bundles relied upon by the parties in the First-tier Tribunal.

Hearing and Submissions

8. Both representatives made submissions which I have taken into account. These are set out in the Record of Proceedings and need not be repeated here. Ms Wass contended that though the grant of permission appeared to be partial, there was only one real ground encompassing the central issue on whether the FtTJ had erred in his approach to the question as to whether there was a family life in existence sufficient to engage the operation of Article 8 ECHR. The grounds taken together were therefore indivisible. I agree with Ms Wass that the distinction drawn is superficial and that the grounds of challenge go to one core issue hence I shall deal with these as one ground. Mr Parvar did not raise any objections.

Discussion and Analysis

9. On the complaint that the Judge's finding on the lack of face to face meetings and that this undermined the claim to the existence of family life under Article 8 ECHR, the FtTJ did not state that such a format of meeting was required to establish family life for the purposes of Article 8 ECHR. Rather, this finding must be read as forming part of the FtTJ's overall findings made on the entirety of the evidence which lead him to conclude that family life had not been established. An holistic reading of the findings made by the FtTJ sufficiently shows that the other evidence alongside the lack of in person meetings was properly considered to reach this conclusion. In other words, I do not accept that the FtTJ wrongly placed weight on the lack of face to face meetings, or that that it was inherently erroneous in noting this as a finding of act. I also do not accept that this was to be interpreted as an introduction by the FtTJ as an additional hurdle which is not a requirement in the assessment of the appeals under Article 8 ECHR. In my judgement the entirety of the evidence was properly considered in the round.

10. On the argument that the FtTJ erred at [19] by stating that there was no evidence regarding the nature of the conversations between the appellants' and the family members here in the UK, when there was in fact the oral testimonies given by the witnesses at the hearing which the FtTJ could have taken into account, I do not find that there was any error in the FtTJ's assessment of all the evidence placed before them in this regard. This would have included the oral evidence from the witnesses at the hearing. That the FtTJ did not state this in terms does not mean that such evidence (examples of which are highlighted in the grounds of challenge), was not considered by the FtTJ. The Judge set out at [19] that '*having considered the evidence in the round*' they decided, ultimately, that the telephone calls between the appellants' and the offspring in the UK were not indicative of a relationship that went beyond normal emotional ties.

11. This is the correct test as per the trite authority in Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31, and the Judge again self-directed on considering all the evidence in the round at [23]. The oral evidence was also noted at [10] under the heading '*Evidence*' where the FtTJ noted that oral evidence was heard from the sponsor alongside the appellants' three sons. I therefore do not accept that the Judge either missed or failed to consider the

oral evidence of any of the witnesses at the hearing. Furthermore, even if I were to accept that the FtTJ did disregard the oral evidence of the witnesses at the hearing which detailed the nature and substance of the communications said to be had between them and the appellants over social media and by other modern methods of communication, such an error is unlikely to have been material as it is equally unlikely that such communications, even when taken at their highest, absent any financial or other element/s of dependency, over and above that which was relied upon in these appellants appeals to argue the existence of family life, would have been sufficient to meet the high "Kugathas" threshold.

12. Turning to the point raised in the grounds regarding a numerical threshold being placed on the time, length and number of What's App calls, the FtTJ's findings on this formed part of his wider findings made on the overall contact and evidence in this regard between the appellants and their offspring and sponsor in the UK, rather than this being considered in isolation. There was no error in the FtTJ's approach here and I also do not accept that the FtTJ introduced an unknown threshold as is being argued here.

Conclusions

13. Accordingly, the Upper Tribunal interferes only with caution in the findings of fact by a First-tier Tribunal which has heard and seen the parties give their evidence and made proper findings of fact. An appellate Court or Tribunal may not interfere with findings unless they are 'plainly wrong' or 'rationally insupportable' as per **Volpi & Anor v Volpi** . That high standard is not reached here. The appellants' appeal must therefore fail.

14. In all, I do not find when reading the FtTJ's decision as a whole, that they failed to consider any of the evidence with the required degree of scrutiny. The decision is properly structured and a proper contextual reading of the decision shows that the FtTJ, having carefully analysed all the evidence alongside all the arguments and submissions put to them, gave sustainable reasons, concluding ultimately as stated in the decision. It was in my judgement open to the FtTJ to find that Article 8 ECHR under the family life heading had not been engaged for the reasons that they gave. The reason the appeal was dismissed was that the weight given to the evidence did not enable the appellants to succeed. The requirement is for reasons to be adequate, not perfect. A reader of the decision is able to understand why the FtTJ came to the conclusion set out in the decision. Whilst the appellants may disagree with the FtTJ's decision, I find in light of the issues set out above, that the appellants have failed to establish arguable legal error material to the decision to dismiss the appeals sufficient to warrant the Upper Tribunal interfering any further in this matter. No material legal error is made out.

15. I am satisfied that there were no identifiable errors of law in the decision by the FtTJ. The law was applied correctly, with sufficiently clear findings and adequate reasons provided. The grounds advanced by the appellants, in my view, constitute disagreement with the conclusions reached by the FtTJ. I am satisfied that the FtTJ correctly identified the correct tests and legal thresholds which he was required to apply in considering these appeals.

Notice of Decision

16. The appeals are dismissed.

17. The decision by the First-tier Tribunal dismissing the appellants appeals shall stand.

S Meah
Judge of the Upper Tribunal
Immigration and Asylum Chamber
22 November 2024