



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/09690/2014

THE IMMIGRATION ACTS

Heard at Field House
On November 19, 2014

Determination Promulgated
On November 21, 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

MR KALEEM KHAN
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not represented at hearing

For the Respondent: Mr Avery (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant, born December 26, 1987, is a citizen of Pakistan. The appellant entered the United Kingdom as a student in February 2011 with a visa valid until November 30, 2013. On November 29, 2013 he applied for a residence card to remain as the extended family member of Suleman Butt who is either his cousin or uncle depending on which part of his evidence is correct. The respondent refused this application.

2. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the Immigration (European Economic Area) Regulations 2006 on February 19, 2014 and on July 1, 2014 Judge of the First Tier Tribunal Devittie (hereinafter referred to as the "FtTJ") heard his appeal and in determination promulgated on July 29, 2014 he refused his claim under the EEA Regulations, the Immigration Rules and human rights grounds.
3. The appellant lodged grounds of appeal on August 12, 2014 and on September 30, 2014 Judge of the First-tier Tribunal McDade gave permission to appeal on the basis the FtTJ may have erred by finding the appellant was not related as claimed because the refusal letter did not make such an assertion.
4. By midday today there was no attendance by either the appellant or his representatives. Neither the appellant nor his family member had attended the original hearing before the FtTJ and it does not appear he was represented on that occasion either. My clerk contacted the solicitors who indicated that a letter had been sent on November 3, 2014 inviting the Tribunal to deal with the appeal on the papers. A copy of that letter was requested and placed on the court file.
5. In those circumstances I proceeded with the hearing and invited Mr Avery to make his submissions on the error in law.

SUBMISSIONS ON ERROR OF LAW

6. The grounds of appeal took issue with the following matters:
 - a. The FtTJ was wrong to find the appellant was not related as claimed because this was not a matter taken up in the refusal letter or at the hearing when it seems nether party was represented.
 - b. The FtTJ was wrong to find the sponsor was not living in the United Kingdom and exercising treaty rights.
 - c. The FtTJ was wrong to find the appellant's fees had not been met by the sponsor as evidence of remittances was before the Tribunal.
 - d. The article 8 outcome would have been different if positive findings on the above had been made.
7. Mr Avery submitted:
 - a. Judge of the First-tier Tribunal McDade appeared to have given permission based on the finding that the appellant was not related

as claimed. He accepted the refusal letter did not specifically challenge the relationship but submitted either the letter did not accept the relationship or alternatively this error was not material because of the other adverse findings.

- b. The sponsor's own evidence was that he earned £3,205 for the twelve months to March 2014. There was a lack of evidence submitted about other income from previous years but if he only earned that amount then his claim that he financially supported the appellant lacked credibility and the FtTJ was entitled to make that finding in paragraph [7(iii)] of his determination.
 - c. The FtTJ was also entitled to make the other findings in paragraph [7] as he was provided with a lack of evidence to support the claims and neither the appellant nor sponsor attended to answer any questions the FtTJ may have had about the documentation.
 - d. As the appellant claimed he was financially dependant on the sponsor then the fact the sponsor only claimed to earn £3,205 undermined this claim and the appellant had failed to demonstrate anything other than mere emotional ties.
8. Having heard Mr Avery's submissions I reserved my decision.

ASSESSMENT OF ERROR OF LAW

9. Grounds of appeal were submitted and when Judge of the First-tier Tribunal McDade considered the application he notably stated the only possible error was the finding about there being no family relationship. Paragraph [3] of the permission states, "It appears that in paragraph [11] of the judge's determination he went beyond what the respondent had apparently already accepted, namely the family relationship between the parties, and as such there is an arguable error in law".
10. The grounds of appeal raised other grounds as set out above in paragraph [6] but none of these other grounds were mentioned in the grant of permission.
11. I have considered the other grounds and I am satisfied the FtTJ's findings on those other issues were open to him. In particular, great weight was placed on the appellant's financial reliance on his cousin/uncle but no evidence relating to the payment of fees or maintenance was provided. Of even more concern is the fact the sponsor's own accountant indicated his only income was as a self-employed taxi driver and his gross income was £9,810 and his net profit was £3,205. The letter confirmed that the sponsor had no other income.

This profit figure amounted to £61 per week. The FtTJ was entitled to make the findings he did about income and he was entitled to find the appellant was not financially dependent on his uncle/cousin.

12. The FtTJ noted that little financial evidence was produced with the application itself but that in itself is not a reason to refuse the application. The FtTJ considered all of the evidence including a letter from HM Revenue and Customs that suggested he received no income from his self-employment in the year ending April 2012. Bearing in mind the appellant claimed to have been supported before he arrived here and since he has been here, the FtTJ was entitled to have the concerns he did.
13. The FtTJ made findings that were open to him and it therefore comes as no surprise that Judge of the First-tier Tribunal McDade did not highlight any error in these other areas.
14. I accept the respondent did not raise relationship as an issue but if there is an error this is not based on the FtTJ's other findings.
15. I note the appellant has claimed his sponsor is his uncle or possibly his first cousin. There is a discrepancy and there may be an innocent explanation for this. I could not take this issue any further because the appellant did not attend the hearing having instructed his solicitors to inform the Tribunal he wanted his appeal decided on the papers. Regardless of this point I am satisfied any possible error about the relationship is not material to the EEA consideration for the reasons set out above.
16. Judge of the First-tier Tribunal McDade did not suggest there was an error in law with regard to any article 8 assessment. The appellant did not meet Appendix FM or paragraph 276ADE of the Immigration Rules. Even if I accept he was related there is no evidence of any financial dependency based on the FtTJ's findings which I have upheld. He may live with the sponsor but it is unclear who actually pays the rent. The rent is £850 per month and as the sponsor only earned £61 per week no satisfactory explanation was provided as to how the rent was paid. The appellant has only been in the United Kingdom for a short period of time and during that time he claimed to have been studying. Mere study cannot raise article 8 ECHR. The FtTJ found at paragraph [11] of his determination there as no family or private life. Even if he was wrong about the appellant and sponsor being related the appellant has to show more, as an adult, than a mere family relationship.
17. There is nothing exceptional or compelling about the facts of this case that would make removal unjustifiably harsh. The appellant and

sponsor did not attend the hearing (original or today's) and his evidence and claim was rejected.

18. I am satisfied the FtTJ considered article 8 within the Rules and there was no necessity to consider the application outside of the Rules in light of the negative findings made as there was nothing exceptional or compelling that would make his removal unjustifiably harsh.

DECISION

19. There was no material error of law. I uphold the original decision and dismiss the appeal before me.
20. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order was made in the First-tier Tribunal and I see no reason to amend that Order now.

Signed:

Dated: **November 21, 2014**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

The appeal was dismissed and no fee award can be made.

Signed:

Dated: **November 21, 2014**

Deputy Upper Tribunal Judge Alis