Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/22040/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
17 June 2014	**1 July 2014**

Before

Lord Matthews, sitting as an Upper Tribunal Judge
Deputy Upper Tribunal Judge Macdonald

Between

MR SYED ALI ABBAS
(Anonymity Direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Nasim, Counsel
For the Respondent: Ms Everitt, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Pakistan born on 12 January 1983. He appealed against the respondent's decision taken on 15 May 2013 to refuse to issue a Residence Card as confirmation of a right of residence in the UK under European community law as the brother-in-law of an EEA national exercising treaty rights in the UK. He claims to be an extended family member of an EEA national and her spouse (his younger brother) under Regulation 8(1) of the Immigration (EEA) Regulations 2006. In a determination promulgated on 31 January 2014 the First-tier Tribunal dismissed his

appeal under the Regulations. His grounds of appeal also relied on Article 8 of the European Convention on Human Rights and Fundamental Freedoms. At paragraph 11 of the determination the FtT found that the issue did not arise because, reading shortly, it was said in the reasons for refusal letter that in the event of the appellant's not making a voluntary departure from the UK a separate decision might be made at a later date to enforce his removal. The FtT found, at paragraph 12, that there was at that time no interference with the appellant's Article 8 rights and that it was open to him to make a separate human rights claim if so advised or alternatively to appeal against any removal decision that might in due course be made.

2. Permission to appeal the decision was refused by the First-tier Tribunal on 8 April 2014 and permission was sought from the Upper Tribunal. Paragraph 2 of the grounds submitted to the Upper Tribunal was to the effect that the FtT, in its determination, and the Judge refusing permission to appeal had made an error of law. Paragraph 3 is in the following terms:

> "3. It is submitted that the appellant is extended family member of his brother as claimed." [sic].

The remainder of the grounds refer to Article 8 considerations.

3. Permission to appeal was granted, the following reasons being given by the Upper Tribunal Judge:

> "It is arguable that the First-tier Tribunal erred in law by refraining from determining the appeal on Article 8 ECHR grounds notwithstanding the statement made in the respondent's refusal notice and quoted by the judge at [11]. The appeal raises issues including the application of the principles enunciated in *JM* [2006] EWCA Civ 1402 to appellants relying upon the Immigration (EEA) Regulations 2006."

4. Before us Mr Nasim submitted that the refusal to decide the Article 8 issue was an error of law and this was conceded by Ms Everitt for the Secretary of State. Indeed the Rule 24 notice had conceded the point. We are quite satisfied that the concession on behalf of the respondent was properly made and have no difficulty in finding an error of law established.

5. Mr Nasim drew our attention to paragraph 3 of the grounds of appeal which we have mentioned above. He seemed to be submitting that he should be allowed to argue that the appellant was an extended family member in terms of the Regulations and was making no concession that the determination of the First-tier Tribunal was correct in that regard. This was not, however, the basis upon which permission to appeal was granted and we refused to allow the matter of the Regulations to be ventilated. Paragraph 3 did not in any event constitute a ground of appeal, being merely an assertion of the appellant's position. We decided however that we should re-make the decision insofar as it proceeded on a consideration of Article 8 and we heard evidence and submissions.

The Evidence

6. The appellant adopted a statement dated 16 January 2014. In that statement he said that he came to the United Kingdom on 7 May 2007 on a valid student visa. His brother arrived in the UK in 2009. Since the latter had been in the UK he had been financially supporting the appellant. His brother and his wife, a Spanish national, had been married since August 2011 and they now had a one-year old son. His brother had been supporting him financially by depositing money into his account as well as occasionally giving him cash in hand as "pocket money". When he and his brother lived in Pakistan they lived at the same address. His brother had been working in the United Kingdom, as had his wife, who was a self-employed jeweller. She was registered as self-employed and was exercising her treaty rights in the United Kingdom.

7. In oral evidence he said that he used the money he was given for personal things such as mobiles, going out with friends, food and drink. He could not return to Pakistan because he had nothing there. He had sold all of his property in that country and had been here for more than seven years. While he was able to work here he worked in Foot Locker but his job finished in 2012 and he had not worked since then because he was not allowed to. He had intended to study but having paid his fees the two colleges he was to attend closed down. He still wished to study. In cross-examination he said that his uncle paid the college fees and his father paid the visa fees. His brother gave him money for shopping. Both his parents were still alive. His uncle lived in America but his parents lived in Pakistan. He said that his father was a farmer and had distributed all of his property to his children. The appellant had sold his share. His parents were living with his younger brother and he could not go there. They had nothing to give him and could not support him. He was asked if his brother in the UK could still give him money if he went to Pakistan but he said he was living with him and his brother provided his food as well as giving him extra money. It would take him ages to find a job in Pakistan. He was not working in the UK at the moment, it was not easy to get work in Pakistan and he was now over 30 years of age. He had paid his taxes when he was able to work in this country and had obeyed the law.

8. The appellant's brother Hassan Abbas adopted his statement. He confirmed that he came to the United Kingdom in 2009 and married on 5 August 2001. He and his wife now had one young son. He and his family lived with the appellant at the same address in Watford. He had been supporting his brother while he was in the United Kingdom by giving him cash in hand or putting money into his account. In Pakistan they lived at the same address. He confirmed that his wife was exercising treaty rights in the United Kingdom, being self-employed as a jeweller. In oral evidence he was asked what impact there would be on him and his family if the appellant were to go back to Pakistan. In answer to that question he said that his brother spent time with him and did not have anything left back home, having sold his own property, so it would be terrible for him. When the question was asked again he said that his brother helped him a lot at home with his child as well as going shopping.

9. In cross-examination he said that he put £37 into his brother's account on a weekly basis. If he went back to Pakistan he would give him money. He was asked if the appellant could live with his parents and his younger brother. He said his brother recently got married but that his parents lived in the house the family used to live in. The brother who got married lived in a different place. There was another younger brother living at the family home who was still studying. Even if he provided money to his brother in Pakistan that would not help him there. It would not be enough. He would not be able to build up enough to get married for example.

10. The final witness was Laura Izquierdo Perez.

11. She adopted her statement, which confirmed that she was a Spanish national and had been married to the appellant's brother since August 2011. She and her husband had a young son aged one and they all lived in Watford with the appellant. The appellant had always lived with them since she had been living with her husband and the latter had always supported the former financially. He gave him money on a weekly basis, sometimes cash or sometimes by way of deposit into the appellant's bank account.

12. In cross-examination she said that her husband usually provided around £50 a week to the appellant.

Submissions

13. Ms Everitt submitted that article 8 was not engaged. The appellant and his brother were grown up and he lived with his brother out of convenience or perhaps financial necessity because he could not work. While he helped with his brother's child and with shopping there was nothing which took the case beyond the usual family ties. As far as private life was concerned, the appellant had been in the UK more than seven years but a lot of that time was without leave and was precarious. There had not been much evidence about private life other than the fact that he worked in Foot Locker and had made abortive attempts to study in two colleges. He would have support when he went back to Pakistan. She pointed out the discrepancy in the evidence between that of the appellant and that of his brother in relation to where the parents lived.

14. Mr Nasim referred to paragraph 8 of the determination of the First-tier Tribunal and under reference to Dauhoo said that there was evidence of financial dependency. It was clear that the appellant and his brother saw themselves as a family unit. Mr Nasim referred to the evidence of the support provided by the appellant in relation to the child and the shopping. There would not be much for the appellant in Pakistan and he would have difficulty in obtaining a job. Family life was clearly established and it would be disproportionate if it were broken up. He drew our attention to evidence of bank statements showing money being paid to the appellant by his brother.

Discussion

15. We have no difficulty in accepting that the appellant has been in this country for over seven years and has been living with his brother and his wife since at least August 2011. We are satisfied that he assists with childcare from time to time and with shopping. We are satisfied also that his brother supports him financially. The bank statements bear that out as does the testimony, written and oral, which was placed before us. The bank statements contain various figures for "pocket money" ranging from £25 to £150 but we understand that the amount will change from time to time and it seems to us that a figure of about £50 a week reasonably reflects the level of financial support provided.

16. Having said all that, and mindful of the Razgar tests, we are not satisfied that Article 8 is engaged at all. Leaving aside the question of finance at the moment there is nothing in the evidence which leads us to the conclusion that there is anything between the brothers other than the usual family ties. We accept that the appellant lives in his brother's house effectively as a non-paying guest, albeit contributing to some extent to the performance of household tasks. The money which the appellant receives does not seem to us to take the matter very far. His own description of it as being for mobiles and going out with his friends chimes with the description of it in the bank statements and in his statement as "pocket money". None of this, either alone or in combination, is sufficient to elevate this to the sort of family life which is required.

17. It may be that some private life has been established here but, if there is, the only evidence we heard about it was the fact that the appellant worked for a time with Foot Locker and had two abortive courses of study.

18. In the circumstances we are not persuaded that either family life or private life have been established so that Article 8 has no application.

19. Even if we are wrong in this we are perfectly satisfied that the removal of the appellant will be in accordance with the law and necessary for the upholding of proper immigration control and that it will be proportionate.

20. The evidence was to the effect that the appellant's brother would continue to support him financially and the appellant has not proved that he would be unable to live with his parents, in the family home where he grew up. In reaching this conclusion we bear in mind the discrepancy previously referred to. It may be that he will have some difficulty in obtaining work but if that is so he will be in precisely the same position he is in at the moment. He will doubtless be able to maintain contact with his brother and his family through modern means of communication. Effectively there was nothing in the evidence which tended to show that his removal would be disproportionate.

Decision

21. We allow the appeal against the decision of the First-tier Tribunal only in respect that there has been an error of law consisting of the failure to deal with the question of the application of Article 8 ECHR. We re-make the decision in that regard and dismiss the appeal on Article 8 grounds for the reasons herein before stated.

LORD MATTHEWS
Sitting as an Upper Tribunal Judge
(Immigration and Asylum Chamber)